Prayer for relief

And complainant prays that this his bill of complaint may be treated and considered as also his application for an interlocutory injunction to stay payment of the amounts which he is re
7 quired by said award to pay, and that your honor, after giving three days' notice to the parties respondent to this bill, will grant him an interlocutory injunction, staying payment of the amounts which he is required to pay by the terms of said award, until the final decision of this cause, and complainant further prays that on the final hearing of this cause your honor will restrain and forever enjoin the enforcement of said award as contrary to law, and decree that the said award is illegal and invalid, and set aside the same, and this complainant prays for such other and further or different order, decree and relief as the equity of the cause may justify.

OUTLAW, KILBORN & SMITH,
HARRY T. SMITH & CAFFEY,
Solicitors for Complainant.

Footnote: Each of the defendants, Letus N. Crowell and J. B. Knudsen, is required to answer each and every allegation of the above and foregoing complaint, from paragraph first to paragraph sixth, both inclusive, but not under oath, oath as to each of such answers being hereby expressly waived.

OUTLAW, KILBORN & SMITH,
HARRY T. SMITH & CAFFEY,
Solicitors for Complainant.

Duly sworn to by Charles Benson; jurat omitted in printing.

8 *Exhibit A to bill of complaint*

United States. Employees' Compensation Commission, office of Deputy Commissioner Letus N. Crowell, Case No. 93–1, administering longshoremen's and harbor workers' compensation act.

EMPLOYEES CLAIM FOR COMPENSATION

(To be filed with the deputy commissioner in accordance with sections 13 and 19 of the law)

1. Name of employee: J. B. Knudsen.
2. Address: Street and No.: U. S. Marine Hospital, City or town, Mobile.
3. Sex: Male. Age, 55. Married, single, widowed: Single.
4. Do you speak English? Yes. Nationality: Norwegian.

9 Injured person:

5. State regular occupation. Rigger, ship construction, diver.
6. What were you doing when injured? Preparing to splice fall.
7. (a) Wages or average earnings per day, $5.00. (Include overtime, board, rent, and other allowances. (b) Per week, $30.00. (c) Were you employed elsewhere during week in which you were injured? No.

8. Were you paid full wages for day of accident? Nothing.

Employer:

9. Employer, Charles Benson, Benson Sheet Iron & Metal Works.

10. Office address: Street and No.: NW. Water & Palmetto. City or town: Mobile.

11. Nature of business: Barge owner, ship repair.

The injury:

12. Place where injury occurred: Derrick barge Chickasaw, Pinto Island, Mobile Co.

13. Name of foreman:

14. Date of accident or first illness, the 4th day of July, 1927, at about 10 o'clock a. m.

15. How did accident happen or how was occupational disease caused? Was struck and knocked down on barge when tackle, made fast to wharf, let go, upon part of wharf to which tackle was fastened, breaking loose.

Nature and extent of injury:

16. State fully nature of injury or occupational disease: Fracture right femur, supercondylar with posterior displacement and vertical intracondylar fracture also.

17. On what date did you stop work because of injury? July 4, 1927.

18. Have you returned to work? (Yes or No) No.

19. Does injury keep you from work? (Yes or No) Yes.

20. Have you done any work in period of disability? No.

21. Have you received any wages since injury? No.

22. Has injury resulted in amputation? No.

23. Did you request your employer to provide medical attendance? Don't know. Was completely disabled by injury. Has he done so? No.

24. Attending physician: Name, U. S. Marine Hospital. Address: Mobile.

25. Hospital:

Notice:

26. Have you given your employer notice of injury? (Yes or No) Yes; by B. Roberts. When? July 4, 1927, and May 29, 1928.

27. If such notice was given, to whom? Charles Benson, Benson Sheet Iron & Metal Works.

28. Was it given orally or in writing? First notice oral, second in writing.

I hereby present my claim to the deputy commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

(Signed by) J. B. KNUDSEN,
Claimant.

Mail address, U. S. Marine Hospital, Mobile, Ala.

Dated May 29, 1928.

11 *Exhibit B to bill of complaint*

United States Employees' Compensation Commission, office of Deputy Commissioner Letus N. Crowell Case No. 93–1, Administering Longshoremen's and Harbor Workers' Compensation Act

ANSWER OF EMPLOYER OR INSURANCE CARRIER TO EMPLOYEE'S CLAIM FOR COMPENSATION

J. B. KNUDSEN, CLAIMANT

VS.

CHARLES BENSON—BENSON SHEET IRON & METAL WORKS, EMPLOYER

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is admitted that applicant sustained an injury on or about the date set forth in the application.

2. It is denied that both the employer and employee were subject to the longshoremen's and harbor workers' compensation act at the time of the alleged injury.

3. It is denied that the relationship of employer and employee existed at the time of the injury.

4. It is denied that at the time of the alleged injury the employee was performing service growing out of an incidental to his employment.

5. It is admitted that notice of injury was given employer as specified in application.

6. It is denied that applicant was permanently disabled to the extent stated in application.

12 7. It is admitted that applicant was temporarily disabled for the period stated in application.

8. It is denied that the rate of wages as set forth in application is correct.

9. It is denied that at the time claimant received the injury in question he stood in such relationship to the undersigned as to render the undersigned liable for compensation under the longshoremen's and harbor workers' compensation act.

(Signed) CHAS. BENSON,
Benson Sheet Iron & Metal Works.

NOTE.—The employer or insurance carrier should answer the claim within ten days from the date that a copy of it is served upon him. The original answer should be mailed to the deputy commissioner at the above address and a copy thereof served upon the claimant either personally or by mailing to the address in the claim.

Exhibit C to bill of complaint

United States Employees' Compensation Commission, Seventh Compensation District. In the matter of the claim for compensation under the longshoremen's and harbor workers' compensation act, J. B. Knudsen, Claimant, against Charles Benson and/or Benson Sheet Iron & Metal Works, Employer. Compensation order award of compensation. Case No. 98–1.

13 Such investigation in respect to the above-entitled claim having been made as is considered necessary, and

A hearing having been held in conformity with law, the deputy commissioner makes the following

Findings of fact

That on the 4th day of July, 1927, the claimant above named was in the employ of the employer above named, in Mobile County, in the State of Alabama, in the seventh compensation district, established under the provisions of the longshoremen's and harbor workers' compensation act; that at said time the employer had not secured the payment of compensation under said act; that on said day claimant herein, while performing service for the employer upon the navigable waters of the United States sustained personal injury resulting in his disability while he was employed as a rigger preparing to splice a wire fall on a vessel while said vessel was floating upon said waters, the fall broke loose, striking him, and knocking him down and dragging him with his right lower extremity caught, resulting in partially ankylosed right knee, fracture of right femur with posterior displacement, with 1¾-inch shortening of said extremity.

That the employer had notice and knowledge of said injury as provided by said act.

That the medical, surgical, and hospital treatment required in the attempt to completely cure and relieve the claimant from effects of said injury was furnished by the marine hospital at Mobile, Alabama, for which treatment said hospital is going to make no charge.

That the average annual earnings of the claimant at the time of said injury amounted to the sum of $1,500.00.

That as a result of said injury the claimant sustained temporary total disability from July 4, 1927, to November 22, 1927, both dates inclusive, covering a period of 72 4/7s weeks, and he is entitled to 72 4/7s weeks' compensation for such disability at the rate of $19.32 a week.

14 That as a result of said injury claimant has a permanent partial disability consisting of 65% (sixty-five per cent) loss of use of his right leg.

That the difference between 40 weeks and said 72 4/7s weeks is 32 4/7s weeks, which when added to 288 weeks makes 320 4/7s; that 72 4/7s weeks deducted from 320 4/7s weeks equals 248 weeks, and 65% of 248 weeks equals 161.2 weeks, and the claimant is entitled to 161.2 weeks' compensation for such permanent partial disability at the rate of $19.23 a week.

That Attorneys Pillans, Cowley, and Gresham, the claimant's attorneys, have rendered legal services to said claimant and the reasonable value of such services is the sum of $630.00 which is approved by the deputy commissioner in said sum; that said attorneys are entitled to a lien upon award for compensation in said sum of $630.00.

Upon the foregoing facts the deputy commissioner makes the following

Award

That the employer, Charles Benson and/or Benson Sheet Iron & Metal Works, shall pay to the claimant, J. B. Knudsen, compensation as follows:

The sum of $19.23 a week beginning July 4, 1927 for 233-27/35 consecutive weeks, less $630.00 payable direct to Attorneys Pillans, Cowley & Gresham.

Given under my hand at New Orleans, Louisiana, this 26th day of December, 1928.

(Signed) LETUS N. CROWELL,
Deputy Commissioner Seventh Compensation District.

LNC:mt

[File endorsement omitted.]

15 In United States District Court

[Title omitted.]

Order fixing date for the hearing of application for interlocutory injunction

Filed January 24, 1929

On reading the application for an interlocutory injunction against the respondents in the above entitled cause, as embodied in the bill of complaint therein, it is ordered that the hearing of said application for an interlocutory injunction be and the same is hereby set for 10 o'clock on the 1st day of February, 1929, and that the clerk issue a written notice to the parties in interest of said application and of the date set for the hearing thereof, and cause the same to be served on said parties at least three days in advance of the time appointed for the hearing.

Done this 24th day of January, 1929.

ROBERT T. ERVIN,
Judge, United States District Court.

[File endorsement omitted.]

16 In United States District Court

[Title omitted.]

Notice of hearing

Filed January 25, 1929

The President of the United States of America, to Letus N. Crowell, deputy commissioner, and J. B. Knudsen, greeting:

You and each of you is hereby notified that the hearing on the application for an interlocutory injunction against you in the above entitled cause, as embodied in the bill of complaint therin, is set for 10 o'clock a. m., on the 1st day of February, A. D. 1929, in the United States District Court for the Southern District of Alabama, in Mobile, Alabama.

The United States marshal, or any of his deputies, will serve this notice and make due return thereof according to law.

Witness the honorable Robert T. Ervin, judge of the District Court of the United States for the Southern District of Alabama, and the seal thereof at Mobile, Alabama, this the 24th day of January, A. D. 1929.

[SEAL.] VIRGIL C. GRIFFIN,
Clerk.

By SARAH G. GRIFFIN,
Chief Deputy Clerk.

Issued January 24th, 1929. Returnable February 1st, 1929.

17 5-2707-186. Recd in office 1-24-29. (90)

Executed by personal service of this writ on each party named within. 1-24-29.

JAMES A. STAFFORD,
U. S. Marshal.

By D. S. PENNINGTON,
Deputy.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Subpoena and return

Filed Jan. 25, 1929

The President of the United States of America, to Letus N. Crowell, deputy commissioner in and for the seventh compensation district, and J. B. Knudsen, a resident of the city and county of Alabama, and within the Southern District of Alabama, greetings:

18 You are hereby commanded to be and appear before this honorable court at the city of Mobile, Alabama, on or before the twentieth (20th) day after the service of this writ upon you,

then and there to answer unto the petition for injunction filed herein against you by Charles Benson, a resident of the city and county of Mobile, Alabama, the sole proprietor of and doing business under the name and style of Benson Sheet Iron and Metal Works, under the penalty of the law ensuing.

The United States marshal, or any of his deputies for the Southern District of Alabama, will execute this writ and make due return thereof according to law.

Witness the honorable Robert T. Ervin, judge of the District Court of the United States for the Southern District of Alabama, and the seal thereof at the city of Mobile, Alabama, this the 24th day of January, A. D., 1929.

[SEAL.] VIRGIL C. GRIFFIN,
Clerk.
By SARAH G. GRIFFIN,
Chief Deputy Clerk.

Memorandum: The defendants are required to file their answer or other pleadings in the clerk's office at Mobile, Alabama, on or before the 20th day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

[SEAL.] VIRGIL C. GRIFFIN,
Clerk.
By SARAH G. GRIFFIN,
Chief Deputy Clerk.

Issued January 24, 1929. Returnable 20 days, etc.

5-2707-186. Recd in office 1-24-29. (90)

19 Executed by personal service of this writ on each party named within. 1-24-29.

JAMES A. STAFFORD,
U. S. Marshal.
By D. S. PENNINGTON,
Deputy.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Pauper affidavit and order

Filed Feb. 1, 1929

STATE OF ALABAMA,
County of Mobile, ss:

J. B. Knudsen, being duly sworn according to law deposes and says that he is one of the respondents in the above-entitled action;

that he is a citizen of the United States, and that because of his poverty he is unable to pay the costs of said action or to give security therefor.

J. B. KNUDSEN.

Sworn to and subscribed before me this 1 day of February, 1929.

VIRGIL C. GRIFFIN,
Clerk.

Order of court

It is ordered that the said respondent in the above-entitled action be and he hereby is permitted to defend said action to conclusion without prepayment of fees or costs.

ROBERT. T. ERVIN,
District Judge.

Dated: February 1, 1929.
[File endorsement omitted.]

In United States District Court

[Title omitted.]

Order granting interlocutory injunction

Filed Feb. 7, 1929

The complainants application for an interlocutory injunction and the evidence in support thereof having been heard and considered by the court on February 1st, 1929, and at that time taken under consideration by the court, the court now finds and adjudges, based upon the evidence submitted to the court at the said hearing, which evidence consists of the admission in open court by counsel for the respondent J. B. Knudsen that said Knudsen is insolvent, and of the testimony of the said J. B. Knudsen to the effect that he is utterly insolvent and has no income or property of any kind or character, that the said Knudsen is insolvent, and that irreparable damage would ensue to the complainant Charles Benson, unless the complainant's application for an interlocutory injunction be granted. The court further finds and adjudges that the nature of said irreparable damage to the complainant Benson which would result unless said application for an interlocutory injunction should be granted is this: That unless said interlocutory injunction should be granted the complainant Charles Benson would be forced under the terms of said award to presently pay to the respondent J. B. Knudsen a large sum of money, to-wit, $1,538.40, or more, as accrued compensation, and additional compensation thereafter of $19.23 per week until full payment of the amount of the award referred to in the bill of complaint, and that if the complainant Charles Benson should pay the said Knudsen the sum of $1,538.40, or

any amount, in pursuance of the requirements of said award, and if it should be determined that the said award is contrary to law as alleged in the bill of complaint, the complainant Charles Benson, on account of the insolvency of respondent J. B. Knudsen, would be unable to recover the said monies or any part thereof.

The court is therefore of the opinion that the complainant's application for an interlocutory injunction should be granted upon his entering into bond in the sum of $5,000.00 with surety to be approved by the clerk of this court, said bond to be conditioned to pay the said J. B. Knudsen all such amounts as may be ascertained by the
22 final decision in this cause to be due or payable to him by the complainant Charles Benson under the provisions of the longshoremen's and harbor workers' compensation act, as compensation for the injuries alleged to have been sustained by him on July 4th, 1927, together with all such costs as may be decreed against the said Charles Benson in this cause.

And the complainant now appearing and giving said bond, and the same being approved by the clerk, it is now therefore accordingly considered, ordered, adjudged, and decreed by the court that the complainant's said application for an interlocutory injunction be and the same is hereby granted, and the respondents Letus N. Crowell, as deputy commissioner for the seventh compensation district, and J. B. Knudsen, are each hereby enjoined and restrained, until the final decision and disposition of this cause, from enforcing the award referred to in the bill of complaint, as having been made on December 26th, 1928, by the respondent Letus N. Crowell in favor of the respondent J. B. Knudsen and against the complainant Charles Benson, and from collecting or exacting the payment of any of the amounts required to be paid by the complainant Charles Benson by the terms of said award.

Done this 7th day of February, 1929.

ROBERT T. ERVIN,
Judge, United States Court, Southern District of Alabama.

[File endorsement omitted.]

23 In United States district court

[Title omitted.]

Motion of deputy commissioner to dismiss bill

Filed Feb. 7, 1929

To the honorable ROBERT T. ERVIN, *Judge of the District Court of the United States for the Southern District of Alabama, in Equity:*

Now into court, through the United States attorney for the southern district of Alabama, Alex C. Birch, comes Letus N. Crowell, deputy commissioner, United States Employees' Compensation Com-

mission for the seventh compensation district, and moves the court to dismiss the bill of complaint filed herein by Charles Benson, on the following grounds, separately and severally:

1. Because it does not appear from the facts alleged that the compensation order, prayed to be enjoined, was not entered in accordance with law.

2. The facts alleged do not show that there was no competent evidence before the deputy commissioner to support his order sought to be enjoined.

3. For aught that appears, the evidence before the deputy commissioner was in conflict, and the order complained of was based on the deputy commissioner's findings on disputed issues of fact, which findings are supported by competent evidence.

4. Because of the findings of the deputy commissioner on issues of fact are conclusive, unless there is no competent evidence to sustain such findings; and, for aught alleged, evidence was offered to sustain such findings.

5. Because it appears that the order sought to be enjoined was an order of an officer of the administrative department of the Federal Government; and it is not alleged that there was no competent evidence before said officer to support his findings upon which the order sought to be enjoined is based.

6. Because the bill of complaint does not set forth, in whole or in part, the evidence or proof which was submitted to the deputy commissioner at the hearing on which the order, prayed to be enjoined, was entered.

And this respondent further moves the court to strike paragraph four of said bill of complaint, and to dismiss said bill of complaint in so far as the same is grounded upon the matters and things alleged in the fourth paragraph thereof, on the following grounds, separately and severally:

a. The allegation that the respondent Knudsen undertook the work referred to in paragraph four of the bill of complaint as an independent contractor, is an allegation of a conclusion of the pleader, and facts are not alleged showing the relation to have been that of independent contractor.

b. The allegation that the respondent Knudsen undertook to do the work referred to in paragraph four of the bill of complaint as a member of the crew is alleged as but a conclusion of the pleader, and facts are not set forth showing that said respondent was a member of the crew at the time of the injury.

c. Because paragraph four is uncertain and indefinite as to how or in what way the alleged relationship of independent contractor existed.

d. Paragraph four of said bill of complaint is uncertain and indefinite as to how or in what way the alleged relationship of member of the crew existed.

And this respondent further moves the court to strike paragraph five of said bill of complaint, and to dismiss said bill

of complaint, insofar as the same is grounded upon the matters and things alleged in the fifth paragraph thereof, on the following grounds, separately and severally:

a. Because it appears that the respondent Knudsen proceeded under the longshoremen and harbor workers act, and suit was filed by him in the circuit court of Mobile County, Alabama.

b. Because it does not appear that at the time of filing suit in the circuit court the respondent Knudsen knew that complainant had not secured payment of compensation, as alleged in the fifth paragraph of said bill.

c. Because it is not made to appear that the respondent Knudsen had, at the time of the alleged election, a remedy actually existing in the circuit court of Mobile County, Alabama.

d. It does not appear that, at the time of the alleged election, respondent Knudsen had in fact two or more coexisting remedies.

e. It is not made to appear that, at the time of the alleged election, the respondent Knudsen had knowledge of the facts.

f. Because it is not made to appear that the facts introduced in evidence before the deputy commissioner at the time of the hearing showed the matters and things set forth in the fifth paragraph; or that the insistence set forth in said paragraph that respondent Knudsen had elected not to proceed under said Act was ever made before the deputy commissioner or every passed on by him.

g. For aught that appears, complainant is now for the first time in his bill praying an injunction, setting up the alleged defense of election, as set forth in said paragraph five; and that complainant did not seek nor urge said insistence, nor produce evidence of
26 the allegation of said fifth paragraph in the hearing before the deputy commissioner.

ALEX C. BIRCH,
United States Attorney, appearing herein for the Respondent, Letus N. Crowell.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Motion of Knudsen to Dismiss Bill

Filed Feb. 14, 1929

To the Honorable ROBERT T. ERVIN, *Judge of the District Court of the United States for the Southern District of Alabama, in Equity:*

The respondent, J. B. Knudsen, moves to dismiss the bill of complaint filed herein by Charles Benson, on the following grounds, separately and severally:

1. Because it does not appear from the facts alleged that the compensation order, prayed to be enjoined, was not entered in accordance with law.

2. The facts alleged do not show that there was no competent evidence before the deputy commissioner to support his order sought to be enjoined.

3. For aught that appears, the evidence before the deputy commissioner was in conflict, and the order complained of was based on the deputy commissioner's findings on disputed issues of fact, which findings are supported by competent evidence.

4. Because the findings of the deputy commissioner on issues of fact are conclusive, unless there is no competent evidence to sustain such findings; and, for aught alleged, evidence was offered to sustain said findings.

5. Because it appears that the order sought to be enjoined was an order of an officer of the administrative department of the Federal Government; and it is not alleged that there was no competent evidence before said officer to support his findings upon which the order sought to be enjoined is based.

And said respondent further moves the court to strike paragraph four of said bill of complaint, and to dismiss said bill of complaint insofar as the same is grounded upon the matters and things alleged in the fourth paragraph thereof, on the following grounds, separately and severally:

a. The allegation that this respondent undertook the work referred to in paragraph four of the bill of complaint as an independent contractor is an allegation of a conclusion of the pleader, and facts are not alleged showing the relation to have been that of independent contractor.

b. The allegation that this respondent undertook to do the work referred to in paragraph four of the bill of complaint, as a member of the crew, is alleged as but a conclusion of the pleader, and facts are not set forth showing that this respondent was a member of the crew at the time of the injury.

c. Because paragraph four is uncertain and indefinite as to how or in what way the alleged relationship of independent contractor existed.

d. Paragraph four of said bill of complaint is uncertain and indefinite as to how or in what way the alleged relationship of member of the crew existed.

And said respondent further moves the court to strike paragraph five of said bill of complaint, and to dismiss said bill of complaint insofar as the same is grounded upon the matters and things alleged in the fifth paragraph thereof, on the following grounds, severally and separately:

a. Because it appears that this respondent proceeded under the longshoremen and harbor workers acts, and suit was filed by him in the circuit court of Mobile County.

b. Because it does not appear that at the time of filing suit in the circuit court this respondent knew that complainant had not secured

payment of compensation, as alleged in the fifth paragraph of said bill.

c. Because it is not made to appear that this respondent had at the time of the alleged election a remedy actually existing in the circuit court of Mobile County, Alabama.

d. It does not appear that, at the time of the alleged election, this respondent had in fact two or more coexisting remedies.

e. It is not made to appear that, at the time of the alleged election, this respondent had knowledge of the facts.

f. Because it is not made to appear that the facts introduced in evidence before the deputy commissioner at the time of the hearing showed the matters and things set forth in the fifth paragraph; or that the insistence set forth in said paragraph that this respondent had elected not to proceed under said act was ever made before the deputy commissioner or ever passed on by him.

g. For aught that appears, complainant is now for the first time in his bill praying an injunction, setting up the alleged defense of election, as set forth in said paragraph five; and that complainant did not seek nor urge said insistence, nor produce evidence of
29 the allegation of said fifth paragraph in the hearing before the honorable deputy commissioner.

PILLANS, COWLEY & GRESHAM,
Solicitors for J. B. Knudsen.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Order of submission on motion to dismiss

Filed Mar. 18, 1929

This cause comes on to be heard on the motions of J. B. Knudsen and Letus N. Crowell to dismiss the bill of complaint; the same being argued by counsel and submitted in open court by counsel of record, and being considered by the court,

It is ordered, adjudged, and decreed by the court that the said motions of J. B. Knudsen and Letus N. Crowell to dismiss the bill of complaint be and the same are taken under submission.

Done this the 18th day of March, A. D. 1929.

ROBERT T. ERVIN,
Judge.

In United States District Court.

[Title omitted.]

Motion for leave to amend complaint

Filed Mar. 20, 1929

Now comes the complaint in the above entitled cause, and moves the court for leave to amend his complaint in said cause, by adding thereto, after the sixth paragraph, and immediately before the prayer for process, the following paragraphs, namely:

Seventh. And the complainant further shows unto the court that the award of said deputy commissioner was not according to law in this, that the act of Congress, under and pursuant to which said deputy commissioner acted, or purported to act, namely, the longshoremen's and harbor workers' compensation act, 44 Stat., 1424, is unconstitutional and void for that it violates the fifth amendment to the Constitution of the United States in so far as it provides that no person shall be deprived of life, liberty or property, without due process of law.

Eighth. Complainant further shows unto the court that said award was contrary to law in that the act of Congress, under which the respondent, Letus N. Crowell, purported to act, viz, the longshoremen's and harbor workers' compensation act, 44 Stat., 1424, is unconstitutional and void in that it violates the seventh amendment to the Constitution of the United States by depriving the complainant of the right of trial by jury in a common law case, where the value in controversy exceeds twenty dollars.

Ninth. Complainant further shows unto the court that said award was contrary to law in that the act of Congress, viz, the longshoremen's and harbor workers' compensation act, 44 Stat., 1424, under which the respondent, Letus N. Crowell, purported to act, is unconstitutional and void because it violates the provisions of the fourth amendment to the Constitution of the United States, providing that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

Tenth. Complainant further shows unto the court that said award was contrary to law in that the act of Congress, under which the respondent, Letus N. Crowell, purported to act, viz, the longshoremen's and harbor workers'

the respondent, Letus N. Crowell, purported to act, viz, the longshoremen's and harbor workers' compensation act, 44 Stat., 1424, is unconstitutional and void in that it violates section two of article three of the Constitution of the United States, which provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

Twelfth. Complainant further shows unto the court that said award was contrary to law in that the act of Congress, under which the respondent, Letus N. Crowell, purported to act, viz, the longshoremen's and harbor workers' compensation act, 44 Stat., 1424, is unconstitutional and void in that it violates section two of article three of the Constitution of the United States, in that it seeks to vest in an administrative officer, judicial functions, vested by said article of the Constitution in such inferior courts as the Congress may from time to time ordain and establish.

OUTLAW, KILBORN & SMITH,
HARRY T. SMITH & CAFFEY,
Solicitors for Complainant.

[File endorsement omitted.]

33 In United States District Court for the Southern Division of the Southern District of Alabama

CHARLES BENSON, COMPLAINANT

vs.

LETUS N. CROWELL, DEPUTY COMMISSIONER, ET AL., RESPONDENT

No. 135

Outlaw, Kilborn & Smith, of Mobile, Ala., and
Harry T. Smith & Caffey, of Mobile, Ala., for complainant.
Pillans, Cowley & Graham, of Mobile, Ala., for Knudsen.
Alex G. Birch, United States attorney, for Crowell.

Opinion of Hon. Robert T. Ervin, Judge, on motion to dismiss.

Filed May 27, 1929

This is a proceeding filed by Benson against Crowell as deputy commissioner for the 7th compensation district appointed and acting under and by virtue of act of Congress known as the longshoreman's and harbor workers' compensation act, and against J. B. Knudsen, who claims to have suffered an injury while working for Benson. The deputy commissioner allowed Knudsen's claim and the [illegible] by Benson under subdivision b, of section 21 of [illegible] found in United States Statutes at Large, vol. 44, page 1424. The proceeding as amended attacks the act [illegible] provisions of the Constitution, and charges that

the proceedings had before the deputy commissioner were not
34 in accordance with law. The act has never yet been construed by the Supreme Court but it has been before several of the district courts.

In Obrecht-Lynch Corp. vs. Clarke, 40 Fed. (2nd) 144, Judge Coleman held the act to be constitutional and also held that the provision under subdivision b, section 21, should be confined to a review of the testimony presented to and considered by the deputy commissioner.

Judge Hutcheson in Howard vs. Monahan, 30 Fed. (2nd) 480, also held that the appeal under subdivision b, to the district court is limited to enjoining or affirming the award of the commissioner, with the further right if enjoined to direct the commissioner to proceed to make a new award in accordance with law.

Judge Peters on April 2nd in the case of Patrick J. Joyce vs. United States Deputy Commissioner in the first compensation district (not yet reported) held that it was plain the courts are not authorized to interfere unless the award is clearly not in accordance with law. He says, "There is no appeal from the findings of the deputy commissioner. His award is final. It is only when it is shown he has not proceeded according to law that the court has any jurisdiction."

The only one of these three opinions which purports directly to discuss the question of constitutionality is that of Judge Coleman, but the question as raised before me brings the matter in a different light from that considered by him.

The compensation act provides for the filing of a petition with the deputy commissioner, a hearing by him, and an order to be made by him on the hearing. It is then provided by section 18 of the act that if the employer delays over thirty days before complying with the award of the deputy commissioner he may investigate the matter and make a supplementary order declaring the amount of the default which shall be filed in the same manner as the compensation order. A certified copy of such supplementary order may be filed with the clerk of the Federal district court.

35 "Such supplementary order of the deputy commissioner shall be final, and the courts shall upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit."

In section 21, subdivision b, it is said,

"If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted

in the Federal district court for the judicial district in which the injury occurred."

In the proceedings to enjoin the deputy commissioner a number of constitutional objections are raised, but they narrow down to two.

First, section 2, article 3, which reads "the judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

Second, the 5th amendment to the Constitution which provides that no person shall be "deprived of life, liberty, or property without due process of law."

It is urged upon me in the first instance that the hearing before the commissioner is not a judicial hearing by an admiralty court but a mere fact finding statutory proceeding had before an administrative officer under the provisions of this compensation act, and therefore that there was no exercise of the judicial power vested by the Constitution in the Supreme Court and such inferior courts as the Congress may from time to time ordain and establish.

36 In Old Colony Trust Co. et al. vs. Comr. of Internal Revenues 279 U. S. 716, June 3, 1929, the Supreme Court in discussing a similar administrative function of the Government says,

"The Board of Tax Appeals is not a court. It is an executive or administrative board, upon the decision of which the parties are given an opportunity to base a petition for review to the courts after the administrative inquiry of the board has been had and decided."

In Farrel vs. Waterman, 291 Fed. 604, I discussed this question and expressed my view that such inferior courts as Congress from time to time established were invested with power directly by the constitutional provision just as positively as was the Supreme Court; though Congress could apportion this power among such inferior courts as it chose to ordain and establish. The investment of judicial power however, came from the Constitution and not from the act of Congress creating the court. I see no cause to change the view then expressed but am more convinced of it now than at the time I wrote the opinion. London Guarantee Accident Co., Ltd. vs. Industrial Accident Com. of California, 279 U. S. 109, Apr. 8, 1929; Ex parte Bakelite Corp., 279 U. S. 438, May 20, 1929.

I think every one will concede that the proceeding before the deputy commissioner was not a judicial proceeding, but was a mere statutory proceeding by an administrative officer directed and controlled by the Government's agent.

In Murray's Lessee et al., vs. Hoboken Land & Improvement Co., 18 Howard, 272, the court says in speaking of the statutory proceedings provided by Congress for auditing the accounts of receivers of public moneys, and filing the reports of the audit with the court:

"That the auditing of the accounts of a receiver of public moneys is not, in its ordinary sense, a judicial act, must be conceded. So are all those administrative duties that require the consideration of facts, which involves an inquiry into the existence of facts, and the application to them of rules of law. In this sense the [illegible]

of the President in calling out the militia under the act of 1795, 12 Wheat. 19. or of a commissioner who makes a certificate for the extradition of a criminal, under a treaty, is judicial. But it is not sufficient to bring such matters under the judicial power, that they involve the exercise of judgment upon law and fact. United States vs. Ferreira, 13 Howard, 40. It is necessary to go further, and show not only that the adjustment of the balances due from accounting officers may be, but from their nature must be, controversies to which the United States is a party, within the meaning of the second section of the third article of the Constitution. We do not doubt the power of Congress to provide by law that such a question shall form the subject matter of a suit in which the judicial power can be exerted. The act of 1820 makes such a provision for reviewing the decision of the accounting officers of the treasury. But, until reviewed, it is final and binding; and the question is, whether its subject matter is necessarily, and without regard to the consent of Congress, a judicial controversey. And wer are of the opinion it is not."

On page 275 of the opinion in the same case it is said,

"It must be admitted that, if the auditing of this account, and the ascertainment of its balance, and the issuing of this process, was an exercise of the judicial power of the United States, the proceeding was void; for the officers who performed these acts could exercise no part of that judicial power. They neither constituted a court of the United States, nor were they, or either or them so connected with any such court as to perform even any of the ministerial duties which arise out of judicial proceeding."

The question therefore arises whether or not the act under discussion undertakes to deprive the Federal courts of judicial power conferred upon them by the Constitution.

The answer to this question depends somewhat as it did in the Murray case upon the conclusions reached as to the due process clause, and I shall therefore now discuss that.

In the same case of Murray's Lessee on page 276 the court says,

"That the warrant now in question is legal process, is not denied. It was issued in conformity with an act of Congress. But is it 'due process of law'? The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare that principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will. To what principles, then are we to resort to ascertain whether this process, enacted by Congress, is due process? To this the answer must be two fold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provi-

sions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

"For, though 'due process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings (2 Inst. 47, 50; Hoke vs. Henderson, 4 Dev. N. C. Rep. 15; Taylor vs. Porter, 4 Hill, 146; Van Zandt vs. Waddel, 2 Yerger, 260; State Bank vs. Cooper, Ibid, 599; Jones's Heirs vs. Perry, 10 Ibid, 59; Greene vs. Briggs, 1 Curtis, 311), yet, this is not universally true. There may be, and we have seen that there are cases, under the laws of England after Magna Carta, and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands, and goods of certain public debtors without any such trial; and this brings us to the question, whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings."

The court then proceeded to show that against public debtors there were summary proceedings recognized in Great Britain and in this country which made the proceedings in that case "due process of law."

In the instant case where the employee is seeking to hold the employer liable for an injury suffered by the employee in the performance of his duty, there certainly never was any summary or ministerial proceedings recognized either by the common law in England, or by the practice in this country, which permitted a liability to be fastened upon the employer, and his property to be subjected to this demand, until after a judicial trial of the rights and questions involved.

The court says in the same Murray case on page 284,

"To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination."

I think no one would be so hardy as to contend that the proceedings provided for in this compensation act was a judicial determination of the rights of an employee as against the employer, and unless there is to be found in the act either by appeal, injunction, or otherwise, the right of the parties to have the liability determined by judicial process and hearing then the act is unconstitutional.

It was urged upon me as undoubtedly it was upon the other judges who had this act before them, that the court is limited by the law in its hearing on the injunction, to the question whether or not there was any evidence offered before the deputy commissioner

in which he could have found liability, and that the court under the terms of the act can not have a hearing de novo and pass upon the merits of the case, but is limited to the question whether or not the commissioner on the evidence before him could have found liability.

If this be true then it seems to me necessarily the act was beyond the power of Congress and is void.

In Ohio Valley Co. vs. Ben Avon Borough, 253 U. S. 288, a case in which under a Pennsylvania statute a valuation of a water works concern by a public service commission of Pennsylvania was made for the purpose of determining a fair rate to be charged by the water company, Mr. Justice McReynalds writing for the court on page 289 says,

"Looking at the entire opinion we are compelled to conclude that the Supreme Court interpreted the statute as withholding from the courts power to determine the question of confiscation according to their own independent judgment when the action of the commission comes to be considered on appeal.

"The order here involved prescribed a complete schedule of maximum future rates and was legislative in character. Prentis vs. Atlantic Coast Line Co., 211 U. S. 210; Lake Erie & Western R. R. Co. vs. State Public Utilities Commission, 249 U. S. 422, 424. In all such cases, if the owner claims confiscation of his property will result, the State must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, fourteenth amendment.

The fourteenth amendment applies to the States while the fifth applies to the Federal Government.

I can see no distinction between valuing the property of a water works plant for rate-making purposes, by a commission, and the determination by a deputy commissioner that an employer is liable to an employee for a given sum because of an injury suffered while in the employment. In the one case the water works plant is denied a proper return upon its investment, so its property is taken without due process of law, while in the other the property of the employer is subjected to execution and sale to pay the award made by the deputy commissioner, and so his property is taken without due process of law. In fact the latter is the more direct loss, for while one is denied the right to make a profit, the other is deprived of property already earned.

Certainly proceedings by a commissioner under this act is not more due process than was the hearing by the public service commission in fixing the rates. In neither instance was there a judicial hearing and determination of the rights of the respective parties. If anything there is less due process as against an employer of labor because it is common knowledge that it was in no sense carrying on a public function but was conducting private business.

Can the provisions of the act in question be treated in any way as giving to the admiralty courts the power to hear and determine the facts as well as the law? In section 18 of the compensation act it is provided that in case of default by the employer of the payment of the award within thirty days the deputy commissioner may have an investigation and determine the amount of the default and that this determination may be filed in the Federal district court and it then said "such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of a copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. *Review of the judgment so entered may be had as in civil suits for damages at common law.*" Italics mine.

Now, what judgment was it that might be reviewed as in civil suits for damages at common law? Was it the judgment of the deputy commissioner or was it the judgment of the district court? Apparently it was the judgment of the district court for the provision was that such supplementary order of the deputy commissioner shall be final and the court shall enter judgment for the amount declared in default. The only judgment referred to apparently was the judgment of the court. If the judgment of the court however was to be reviewed, what error could be found by any other court if the court was required by the act to enter judgment in the amount found by the deputy commissioner?

Did Congress intend to require the court to enter its order merely on the finding of the deputy commissioner, and to make that order final. Was the court to make its order without any hearing of the facts, to submit its judgment to the domination of the deputy commissioner because the act said do it? If so would not this of itself
48 be an unconstitutional requirement. How can the Congress require to enter a judgment as between private citizens without a hearing of the facts by the court.

However, we find that the court was to enter judgment for the amount declared in default by the supplementary order. "If such supplementary order is in accordance with law," so apparently by the very terms of the act the court was required to investigate the findings of the deputy commissioner to see if they were in accordance with law. It therefore appears likely that it was the judgment of the deputy commissioner which was to be reviewed.

Subdivision b, of section 21 says, "If not in accordance with law, a compensation order may be suspended or set aside in whole or in part, through injunction proceedings."

That is the same term used in section 18, namely, "If not in accordance with law." What did the Congress mean by these words? Surely they did not mean to limit the court in considering the order of the commissioner to the determination that there was no evidence considered by him which would authorize a decree. If on the hearing before the commissioner the evidence did not justify a compensation order by him then his order would not be in accordance with law.

Again, if the evidence offered before the court on the application for an injunction, on the hearing on such application showed that the award should not be made, then surely the award would not be in accordance with law because to be in accordance with law the facts of the case should justify the award. Again, it is said the "order may be suspended or set aside, in whole or in part." Now if the court is to set it aside in whole or in part does that not indicate an intention that the court was to have all the facts before it, for if the court was not confined in its determination to the question whether the award as a whole was in accordance with law, it must be that Congress intended the court to do complete justice, and to do this the court must have all the facts before it. Again, it will be noticed that there is no provision or requirement for remanding the case to the deputy commissioner. If the court is to set it aside in whole or in part the court is to write the final judgment, and if so it should be only after hearing all the facts.

I can not conceive that Congress ever meant to deprive the employer of labor of the right to a fair judicial hearing before providing that his property might be subjected to the payment of any demands, and therefore I am inclined to treat these provisions found in the act as authorizing the court to go into the real facts and grant a hearing de novo, for it is only by so construing the act that I can hold it to be constitutional.

I feel it my duty to stretch all uncertain expressions used by Congress as far as possible in order to hold the act constitutional just as the Supreme Court did in Hop Fong vs. United States, 209 U. S. 453. Certainly the congress intended there should be an appeal from the ruling by the deputy commissioner to the Federal district court and it is only by treating such appeal as one granting to the court the right to consider the question of fact as well as of law that the act is to be held constitutional. So construed the act conforms to both the constitutional provisions discussed, while the other construction would violate both.

As a question of practice the provisions of subdivision b, section 18, would ordinarily be treated as being on the equity side because the trial or hearing by the court is had through injunctive process, not remembering that the injuries provided for by the act are had in maritime cases and the act only states that it should be entered "in the Federal district court for the judicial district in which the injury occurred."

I hold that the proper court for an injunction to be brought is the admiralty side of this court.

The motion to dismiss the proceedings will therefore be overruled and the court will grant a hearing on the facts and the law to ascertain if the proceedings before the deputy commissioner were in accordance with law.

ROBERT T. ERVIN,
Judge.

Done this 27th day of May, 1929.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Order overruling motion to dismiss

Filed May 27, 1929

This cause having been heard on the 18th day of March, 1929, on the motion filed by Letus N. Crowell and J. B. Knudsen to dismiss the bill of complaint, and said motion being on that day taken under submission by the court;

The court now renders his opinion that the motion to dismiss should be overruled.

It is, therefore, ordered, adjudged, and decreed by the court that the said motion to dismiss be, and the same is, overruled, to which ruling the respondents each except.

Made this 27th day of May, A. D. 1929.

ROBERT T. ERVIN,
Judge.

46 Copies mailed to Outlaw & Kilborn, Harry T. Smith & Caffey; Pillans, Cowley & Gresham; United States attorney.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Order transferring cause to admiralty docket

Filed May 30, 1929

It appearing to the court that this petition for a writ of injunction was brought on the equity side of this court; and that said cause comes under the admiralty jurisdiction;

It is, therefore, ordered, adjudged, and decreed by the court that the clerk do transfer this cause to the admiralty side and let all further proceedings be had in admiralty.

Made this the 30th day of May, A. D. 1929.

ROBERT T. ERVIN,
U. S. District Judge.

47 [File endorsement omitted.]

In United States District Court

CHARLES BENSON, COMPLAINANT

vs.

LETUS N. CROWELL, DEPUTY COMMISSIONER, ET AL., RESPONDENTS

In Admiralty, No. 2176

Answer of Knudsen to bill of complaint

Filed June 24, 1929

To the honorable ROBERT T. ERVIN, *Judge of the United States District Court for the Southern District of Alabama, in Equity:*

The respondent J. B. Knudson, for answer to the bill of complaint, says:

1. The allegations of paragraph 1 of the complaint are admitted, save as to the manner in which complainant does business, strict proof of which is demanded, if deemed material.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted.

4. The allegations of paragraph 4 are denied, separately and severally, except that this respondent admits that the cable had been previously cut by him.

5. Respondent alleges that he sustained the injuries referred to in the third paragraph of the bill of complaint while employed by complainant; that said injury arose out of and in the course of his employment by complainant, which said injury occurred upon the navigable waters of the United States; that said complainant was then and there an employer having one or more employees employed in maritime employment, in whole or in part, on the navigable waters of the United States.

6. Respondent admits filing a suit at law in the Circuit Court of Mobile County against complainant; but respondent denies that he elected not to maintain his claim for compensation under the longshoremen's and harbor workers' compensation act, and alleges that he was and is entitled to maintain said claim under said act; and that he was and is entitled to compensation under said act, as provided by the terms of the award marked "Exhibit C" and attached to the bill of complaint.

Wherefore, the premises considered, respondent prays that the bill of complaint may be dismissed, with respondent's costs and charges in this behalf incurred; but, if respondent be mistaken in

the relief prayed, respondent prays for such other, further or different or more general order, decree or relief, as in law and equity this respondent may be entitled.

PILLANS, COWLEY & GRESHAM,
Solicitors for Respondent, J. B. Knudsen.

[File endorsement omitted.]

49 In United States District Court

[Title omitted.]

Adoption of answer of Knudsen by deputy commissioner

Filed July 3, 1929

Now comes Letus N. Crowell, deputy commissioner, United States Employees Compensation Commission for the seventh compensation district, one of the respondents in the above described cause, by the United States attorney for the Southern District of Alabama, after motion to strike the demurrer was overruled, and adopts as his answer to the original bill of complaint in this cause the answer filed by J. B. Knudsen, the other respondent.

ALEX C. BIRCH,
United States Attorney.

(For Letus N. Crowell, deputy commissioner, United States Employees Compensation Commission for the seventh compensation district.)

[File endorsement omitted.]

50 In the United States District Court for the Southern Division of the Southern District of Alabama

CHARLES [illegible]SON

vs.

LETUS N. CROWELL

No. 2176, In Admiralty

Filed Oct. 19, 1929

Transcript of the oral evidence and proceedings had in the above entitled cause on the 3rd day of July, 1929, before the Hon. Robert T. Ervin, judge.

Appearances: Messrs. Pillans, Cowley and Gresham, Mr. A. T. Gresham, Hon. Alex Birch, and Hon. J. E. Meredith, attorneys for the defendant. Messrs. Outlaw & Kilborn, Mr. V. F. Kilborn, attorneys for the complainant.

Dr. W. S. Dean, a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct examination by Mr. Graham:

Q. You are surgeon in charge of the United States marine hospital at Mobile?

Ans. I am.

Q. You have had and have, in the marine hospital, J. B. Knudsen, the respondent in this case?

51 Ans. Yes, sir.

Q. And he has been at the marine hospital continuously since July the 4th, 1927, until this date?

Ans. Yes, sir.

Q. Suffering from an injury of the leg?

Ans. Yes, sir.

Q. State to the court the nature of the injury—what treatments or operations have been performed, and his present condition.

Ans. Knudsen has been a patient in the hospital for two years. I have only been in Mobile since August 20th, 1928. Knudsen was admitted to the hospital, according to his record, for a fracture intercondyloid of the right femur. For this fracture he has been operated upon more than once. The exact number of times, I do not know. He has a resulting limitation of motion in the right leg, for which, in our opinion, treatment will be of no avail. Meaning that the function of the leg will not be improved materially. He received, from time to time various treatment in physiotherapy with the hope of improving the motion slightly.

Q. Is there any difference in the length of the injured limb and the other limb, Doctor?

Ans. I do not know.

Q. Dr. Hanan has been the specialist in charge of the case?

Ans. Yes, sir.

Q. Are you able to tell us the extent of Mr. Knudsen's permanent disability from this injury?

Ans. From the record and the report that we have made on Knudsen, my recollection is that his disability has been rated as sixty per cent permanent.

Q. The injury that he received and the necessary treatment which he underwent, would that be likely to cause pain and suffering?

Ans. The original injury and first treatment in similar cases would be the cause of considerable pain and discomfort.

52 Crossexamination by Mr. Kilborn:

Q. Dr., did you bring with you that certificate under which he was admitted to the marine hospital?

Ans. I did; yes, sir.

(Note.—The witness produced a paper.)

Q. Is this the original certificate, under authority of which this man, Joe Knudsen, was admitted to the marine hospital in Mobile?

Ans. That is the one that is in the record as the original. I have no direct knowledge that it is the original.

Q. Signed by Beauregard Roberts?

Ans. Yes, sir.

Q. Under the rules and regulations of the marine hospital, it is necessary, in order that a man may gain admission to the hospital, that this certificate be made by the master of the vessel on which he is supposed to be employed, is it?

Ans. In the case of seaman, he must present satisfactory evidence that he is employed on board a registered or licensed vessel of the United States; a certificate signed by the master or a responsible officer of the vessel is sufficient evidence, or his discharge executed by the United States shipping commissioner.

Q. In this case here you took the certificate here as the master's certificate?

Ans. Yes, sir.

The COURT. If you wished, you could substitute a copy for that and withdraw the original.

Mr. KILBORN. I will read it into the record.

(Mr. Kilborn thereupon read the following:)

53 "July 4th, master's certificate of service or sick or injured seamen. Addressed to the medical officer in charge United States Public Health Service. I certify, on honor, that J. B. Nutsen,"—and above that is written the proper spelling of the name, Knudsen, "whose signature and description appear below, has been employed on board in the care, preservation, or navigation—or in the service on board of this—was employed on the Tug 'Sister' of Mobile, official registry No.——, a vessel whose personnel is entitled to medical treatment by the United States Public Health Service. His period of service on the above-named vessel was from the first day of December 1925 to date. I further certify that the person named herein has, in my presence, signed his name in the blank space provided below for that purpose," and this is signed Beauregard Roberts, master of the above-named vessel, and below that this appears, "Signature of the person named above," and there appears a signature but it is scratched out. "Nativity, Norwegian. Age, 55 years. Height, 5 feet 10 inches, color of eyes (in my employ)—color of hair, blue. Distinguishing marks, none. Previous service——. Total service on United States vessels, 10 years."

Mr. KILBORN. We offer that in evidence.

Mr. GRESHAM. Captain Beauregard Roberts, the person signing that paper, is in court, and I expect to examine him as a witness, and if it is possible, I would like to retain that until we examine Captain Roberts.

Cross-examination resumed by Mr. KILBORN:

Q. Your statement where you estimated the disability at 60 per cent—you meant 60 per cent of the loss of the use of that right leg?

Ans. Yes, sir; 60 per cent of that right leg.

Q. He walks all around?

Ans. Yes, sir. He is ambulant and goes on passes from the hospital. He can go twice a week if he wants to, as we do with all our patients who are ambulant.

Q. So far as you know he walks wherever he wants to with that stick when he goes out?

Ans. Yes, sir.

Redirect examination by Mr. GRESHAM:

Q. Assuming that Mr. Knudsen was a rigger, by trade, at the time of his injury, do you think it possible for him to continue that trade in his present condition?

Ans. No; he is completely disabled as a rigger.

Mr. KILBORN. You don't know what a rigger is, do you?

Ans. He has to climb aloft and go up scaffolds and ropes, which he can not do.

Q. He can get around on deck all right, though?

Ans. He can get around on level places, but he can not go up and down steps without difficulty. Walking on a level surface, he can walk fairly well.

Mr. GRESHAM:

Q. Do you know who admitted Captain Knudsen?

Ans. No; I don't know. It is usually recorded on the master's certificate, the Doctor's initials, but it is not recorded on this one. I don't know who admitted him.

Dr. W. C. HANNAN, a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct examination by Mr. GRESHAM:

Q. Your initials are what?

Ans. W. C. Hannan.

Q. A practicing physician and surgeon in Mobile, Alabama?

Ans. Yes, sir.

Q. What has been your training or experience?

Ans. I am a graduate of the University of Alabama and post-graduate at New York for three or four years.

Q. At what institution?

Ans. Belleview Hospital.

Q. Are you connected, in any capacity, with the United States marine hospital?

Ans. Yes, sir; consulting orthopedic surgeon.

Q. And you have been for the last two years?

Ans. Last three and a half or four years.

Q. Have you examined and treated J. B. Knudsen, the respondent in this case?

Ans. Yes, sir.

Q. I believe you are referred to as specialist in bone trouble?

Ans. Bone conditions; yes, sir.

Q. Tell us Mr. Knudsen's injury, his treatment and his present condition.

Ans. Mr. Knudsen has suffered with a fracture just above the right knee in the femur. He had a fracture which went transversely across and split upwards, known as a T fracture, with a great deal of displacement of the fragments. It required a traction known as skeleton traction to reduce it. We had to pass a steel pin through the bone and apply about a thirty-pound weight over a period of about four weeks, and after that he had a plaster cast and then, on account of a piece of bone obstructing motion to the knee, it was necessary to open the knee joint and remove this bone, in order that we may hope to get some function or motion in the knee. He underwent a series of about three operations from the time of admission in the hospital, July the 4th, 1927, up to the present day.

Q. He suffered a good deal of pain from that injury?

56 Ans. About what they generally suffer in that type of injury.

Q. That is a good deal of pain, compared with some other injuries?

Ans. More pain than usual, in fractures.

Q. Do you think he has a permanent injury?

Ans. Yes, sir.

Q. And how much permanent?

Ans. I have not examined Mr. Knudsen since May the 5th. At that time I estimated——

Mr. KILBORN. Was that this year?

Ans. Yes, sir.

The WITNESS (cont'd). At that time I estimated disability at approximately sixty-five per cent.

Examination (cont'd) by Mr. GRESHAM:

Q. Doctor, assuming that Mr. Knudsen was a rigger and a diver by trade at the time of his injury, do you think he will ever be able to follow either of those vocations again?

Ans. No, sir.

Q. I take it you have no knowledge of the circumstances under which Mr. Knudsen was admitted to the hospital—you did not admit him?

Ans. None, other than the fact that he had an injury to his right knee by a pile-driver, I believe, on the 4th of July, 1927.

There was no cross-examination of this witness, and the witness was thereupon excused.

Mr. GRESHAM. That is our medical testimony, if the court pleases.

Dr. S. H. STEPHENS, a witness called on behalf of the complainant, after having been first duly sworn, testified as follows:

57 Direct examination by Mr. KILBORN:

Q. Are you a practicing physician and surgeon in Mobile?

Ans. Yes, sir.

Q. How long have you been practicing?

Ans. In the city?

Q. Altogether, your profession?

Ans. Six years.

Q. Did you go to the marine hospital on yesterday or to-day and make an examination of Mr. Knudsen, here?

Ans. I did yesterday afternoon or last night.

Q. Was anyone present with you when you made the examination?

Ans. Doctor Hatfield was with me—a member of the marine hospital staff.

Q. Dr. Hatfield?

Ans. Yes, sir.

Q. Did you examine the records of the marine hospital, with reference to treatment?

Ans. I did not.

Q. You made an examination of the man, himself?

Ans. Yes, sir.

Q. And the condition of his leg?

Ans. I looked at his leg; yes, sir.

Q. What is his present condition?

Ans. Well, the man has a partially ankylose knee. By that I mean he has a fixed knee. He has, I should say, about fifteen degrees motion. Twelve to fifteen degrees motion. His ankylose, with a slight flexion, is an angle of possibly a hundred and sixty-five (165) degrees.

Q. Has he got a permanent disability there?

Ans. He has.

Q. In your judgment, what percentage is that disability—the loss of the use of the leg?

Ans. The best I can figure, forty-five to fifty-five per cent—in that neighborhood.

58 Q. Do you know whether his condition will improve with use of his leg?

Ans. It will probably improve five per cent, maybe.

Q. With continued use?

Ans. Yes, sir.

Cross-examination by Mr. GRESHAM:

Q. Is the injured leg the same length as the other leg?

Ans. No, sir.

Q. What is the difference?

Ans. I didn't measure the difference. It is probably a half to three quarters of an inch.

Q. You say he has a motion of twelve to fifteen degrees in the knee?

Ans. Flexion—I mean he has a movement of twelve to fifteen degrees.

Q. Is that a perpendicular movement or a horizontal movement?

Ans. No; horizontal. It is anterior and posterior motion. Just a limb like this.

Q. What is the normal?

Ans. About ninety degrees.

Q. Assuming that Knudsen is a rigger, by trade—do you think that he could ever follow his trade again?

Ans. I do not. I do not think he could follow his trade.

The witness was thereupon excused.

Mr. KILBORN. That is all the medical testimony.

CHARLES BENSON, the complainant, called as a witness in his own behalf, after having been first duly sworn, testified as follows:

59 Direct examination by Mr. KILBORN:

Q. Are you Mr. Charles Benson?

Ans. Yes, sir.

Q. Are you proprietor of the Benson Sheet Iron and Metal Works?

Ans. Yes, sir.

Q. What business is that?

Ans. Sheet iron and copper works.

Q. Are you the only party interested in that business?

Ans. Yes, sir.

Q. Did you own a derrick barge called the "Chickasaw"?

Ans. Yes, sir.

Q. Did you own it on July the 4th, 1927?

Ans. Yes, sir.

Q. When did you acquire that barge?

Ans. February the 24th.

Q. 1927?

Ans. Yes, sir.

Q. On July the 4th, 1927, were you insured under the United States harbor workmen's compensation law?

Ans. The boat was out of commission and not working.

Q. Were you insured and did you have any insurance?

Ans. No, sir.

Q. At the time Mr. Joe Knudsen claimed to be injured, on July the 4th, 1927, was he in your employ?

Ans. No, sir.

Mr. GRESHAM. We object to the question because it calls for the opinion of the witness, and because it is a question for the court to decide.

The court overruled the objection and Mr. Gresham reserved exception to the ruling of the court.

60 Q. You say he was not?

Ans. No, sir; he was not.

Q. Had he ever been employed on the derrick barge "Chickasaw"?

Ans. Yes, sir.

Q. In what capacity?

Ans. Deck hand.

Q. Now, you bought that boat from the T. C. I. up at Chickasaw?
Ans. Yes, sir.
Q. And when you bought it, it was up at Chickasaw?
Ans. Yes, sir.
Q. What was it doing up there?
Ans. It was inside the sill. Chickasaw has an embankment all the way up around their property, and this boat was left inside that embankment, which was fifteen feet high, and we had to dig the boat out, and I sent Knudsen up there and they had the boat practically out of the fill. He went up there when they went to pull the piling out to let the boat out of the drainage canal.
Q. When was that when he was working on the boat up at Chickasaw?
Ans. I have a complete record there. You have it in the book. That was the early part of July—I mean the early part of May.
Q. Now, did Mr. Knudsen make any arrangements with you to borrow your derrick barge?
Ans. No, sir.
Q. Did he speak to you about borrowing it?
Ans. He spoke to me after Captain Roberts' barge sunk. It sunk in a north wind with a low tide.
Q. You say Captain Beauregard Roberts had a barge that was sunk?
Ans. Yes, sir; a derrick over at the Southern Dry Dock slip.
Q. On the other side of the river?
Ans. Yes, sir; and that boat sunk and it was in charge of Joe Knudsen.
61 Q. The Roberts barge was in charge of Joe Knudsen?
Ans. Yes, sir; he had borrowed that barge to help raise the "Apollo."
Q. Joe Knudsen had borrowed that barge from Captain Beauregard Roberts and it had sunk across the river in the Southern Dry Dock slip?
Ans. Yes, sir; he had their ways blocked in such a condition that they could not operate the roller ways.
Q. Knudsen spoke to you about borrowing your derrick?
Ans. Just as we got out of the fill, he said it had Captain Roberts worried and one thing or another.
Q. Then did you have any talk with Beauregard Roberts and Joe Knudsen about your loaning the barge?
Ans. Mr. Jim McArtle, examiner of the steel corporation—the T. C. I.—went up there.
Q. Getting away from Mr. McArtle, tell what happened in the conversation between you and Beauregard Roberts and Joe Knudsen about your loaning them your boat.
Ans. Mr. McArtle advised me to take the boat off the fill. I would have been there another week if I had left it on the fill, and Saturday night I went to the telephone and telephoned Captain Roberts and got him at the telephone, himself. I had an appointment with

some one at the Battle House at eight o'clock and it was then twenty minutes to eight, and I said, "Captain, have you time to come to the square a few minutes," and I said, "Is Joe Knudsen there." Captain Roberts and Joe Knudsen both lived in the same house. Joe Knudsen is a single man and Captain Roberts is a married man. He says, "Yes; Joe is right here," and I said, "Bring him down with you," and he says, "I will be there in five minutes," and I said, "Meet me in the south aisle," and we stopped at the third bench from Dauphin Street and I got there two minutes before they did, and I said, "Captain, Joe tells me you are worried about
62 that derrick," and he said, "I have the ways blocked and he says your derrick is the only thing in Mobile that will lift her, and I turned to Knudsen. I said, "Joe, if I let you have that derrick how long will it take you to get that boat out of the slip," and Captain Roberts said, "Captain, if you let me have that boat I will see that nothing happens to it and take good care of it and bring it back anywhere you want at Chickasaw." I was going to repair the boat in Chickasaw, in No. 1 slip, at the T. C. I. property, and I slapped him on the back and said, "Go get her." That was Saturday night, the 7th of May, and he took Knudsen and went up there with his own tug, Monday, and towed that boat to the Southern Dry Dock.

Q. Did you charge, or have any agreement to charge, either Knudsen or Beauregard Roberts for the boat?

Ans. That was all that was said. I had no idea of charging them.

Q. It was just an act of friendship?

Ans. Yes, sir.

Q. Then Beauregard Roberts and Joe Knudsen towed your derrick down from Chickasaw across the river to the Southern Dry Dock slip?

Ans. Captain Roberts' own boat, the "Sister."

Q. Had you purchased any big roll of cable for use on your derrick boat?

Ans. Yes, sir.

Q. How much?

Ans. Three thousand feet of it. I have the bill here from Paterson-McCoy.

Q. At what price?

Ans. $537.00.

Q. Did you have any conversation with Joe Knudsen about cutting any of that cable off that spool?

Ans. Yes, sir. When Knudsen went out there we had cut through the fill, but we had to pull about thirty piling to get into the creek and this boat had the original cable on it that they had
63 used in dredging at Chickasaw, and that not being sufficient to hold that boom when they went to pull this piling, I sent three thousand (3,000) feet of cable out there—enough to put the topping list on it, and also to reave that four-sheave block twenty feet below the water, and Joe Knudsen cut twelve hundred (1,200)

feet off that cable and ran a three and a half (3½) inch top through it and set it out on the piling.

Q. Cut 1,200 feet off for the topping list?

Ans. Yes, sir; and put the balance on the piling.

Q. Was there any more cable cut off there for a swing?

Ans. Yes, sir; eighty-five feet.

Q. Was anything said between you and Joe Knudsen as to whether he should cut any of the remainder of the cable left on the spool?

Ans. Yes, sir; I told him if he had any trouble with the wire breaking on the—

Q. That was the eighty-five feet you spoke of?

Ans. Well, it broke several times. I told him if he needed it for that to cut it off, but don't cut that cable—leave it like it is and all the cable put on the drum.

Q. You told him not to cut any more after cutting the topping list and the bull wheel above?

Ans. Yes, sir. She was rigged for dredging at that time. She wasn't rigged for listing. She was rigged for dredging.

Q. You told him when he got ready to rig it not to cut the wire?

Ans. Yes, sir. Enough wire to get a four-sheave block to go down twenty feet.

Q. That would be the rigging for the fall?

Ans. Yes, sir.

Q. Down from the topping list or swing or bull-wheel proposition?

Ans. Yes, sir.

Q. The boat was towed to the Southern Dry Dock?

Ans. Yes, sir.

64 Q. What was done over there?

Ans. Joe worked over there on that boat of Captain Roberts' and they got back there on the 9th. That was Monday—and Tuesday Harrison Brothers got the boat to get that wreck that burned that night and Harrison came to me and met me in a restaurant and said, "I see you have your derrick down there," and I said, "Yes; Captain Roberts has it up there raising the old 'Apollo,' and he says, could we get it, and I said, "I guess you could," and next evening he came down and wanted to know what I would charge him for it, and I said $75.00, and I said, "If you want it—see Joe," and they saw Joe and took it and lifted that and towed it back the same day.

Q. Before they did that Harrison job, had Joe Knudsen rigged it up?

Ans. Yes, sir. That was the first thing he had to do, because the boat wasn't in condition to lift anything when he brought it down.

Q. He brought it down primarily to do his own work of lifting for Captain Beauregard Roberts?

Mr. GRESHAM. We object to the question as leading.

The court sustained objection.

Q. At the time the boat was at Chickasaw, did you have any business for it at all?

Ans. No, sir.

Q. Did you have any Harrison job or any other job?
Ans. No, sir.
Q. What was the purpose of bringing the boat from Chickasaw?
Ans. Solely to help Captain Roberts to get that boat up, and then he was to tow her back, and we were to go under repairs and then when I came out of Chickasaw to put that fill back and lay the railroad track on it, which we tore up.
Q. You let her come down solely for Knudsen's purpose?
65 Ans. Yes, sir.
Q. But after she got down you got this Harrison job?
Ans. Yes sir.
Q. Did they do any other job?
Ans. Yes, sir. Captain Baker's barge sunk in the middle of Mobile River, south of Three Mile Creek and Herndon Radcliff's tug came up there and they pulled a plank off and sunk the boat in the middle of the river, and Captain Baker took charge of my boat and went to raise her. He went up with his own boat, the "Nugent" and towed her up there and raised her and brought her down and put her on Frank Henderson's Dry Dock. The next morning Dick Walsh came and got the boat and went to the L. & N. and loaded some rails for the T. C. I. This dredge was rigged for quick work for dredging and when you pull your lever to lift the bucket, it started the swing and when he went to lift the rails and Dick saw that condition, he took the boat right back to Henderson's Slip, because it was too dangerous. Then, Knudsen came over and wanted to take the boat back up and I started not to let him have it.
Q. Back up to the Southern Dry Dock?
Ans. Yes, sir.
Q. To finish work on Captain Roberts?
Ans. Yes sir.
Q. Did you let him have it?
Ans. I did.
Q. Did he finish.
Ans. Not that day. He went up to Mat Lipscomb and Captain Roberts, had Mat Lipscomb tow the boat to the Southern Dry Dock.
Q. He finally finished raising Captain Roberts' boat with your boat?
Ans. Yes sir. He had my boat twelve days and they were at the dock eleven days, and I used the boat three days.
Q. That is a record of the time?
Ans. Yes, sir; kept by bookkeeper from the time I bought her.
66 Q. Of her movements?
Ans. Yes, sir; I bought the boat February 24th—moved to Harrison's May 8th, loaned it to Roberts on the 7th—next day was the 8th, which I charged against him, and the 9th, 10th and the 11th.
Q. You said something about charging him—did you ever make any charge against him for using the boat?
Ans. I never did. I never intended to.

Q. You mean it was entered on the book as showing that it was being used by him?

Ans. Yes, sir.

Q. After Knudsen finished raising the Roberts' derrick boat over there in the Southern Dry Dock Slip, what was done with your derrick barge?

Ans. After they had gotten there that evening, this man, Mead, of the Southern Dry Dock, superintendent of the Southern Dry Dock, telephoned me and asked me would I wait for him, and I told him I would.

Mr. GRESHAM. We object to any conversation.

Q. After Knudsen finally got through with his own work—that is, raising the Roberts boat—then, what became of your derrick boat?

Ans. The next morning I had to go to Dr. Frederick's office and didn't go to the shop until ten o'clock, and I told that man there, that day, that under no circumstances to move my boat, "when you get rid of this thing." I had made up my mind then to let Jim Campbell calk the boat there, at the Southern, and I got down and saw Smith on the derrick and I went out there and asked Charlie what he was doing with the boat there.

Q. Where was that?

Ans. At the foot of Palmetto Street—and Herndon Radcliff rang and said he had those two big pontoons.

Q. I want the movements of the boat. She went and moved Herndon Radcliff's pontoons?

67 Ans. Yes, sir.

Q. Then, what did she do?

Ans. Laid there, and the next morning went to Frank Henderson's.

Q. What did she do there?

Ans. Started to raise a sunken barge of mine.

Q. Where did she go then?

Ans. To the Alabama Dry Dock—Gulf department.

Q. For repairs?

Ans. Yes, sir. Hauled out on the dock.

Q. During the time that she was doing the Henderson job and the Baker sand and gravel job and the Radcliff job and when she went over and tried to raise your barge, and when she was on the Alabama Dry Dock, was Knudsen working on her during all that time?

Ans. Yes, sir.

Q. As a member of the crew?

Mr. GRESHAM. We object to that.

The court overruled objection and Mr. Gresham reserved exception to the ruling of the court.

Q. How much were you paying him?

Ans. $5.00 a day—$30.00 a week.

Q. Who else was working on her besides Knudsen?

Ans. Charlie Smith.

Q. He is here to-day?

Ans. Yes, sir.

Q. He is the engineer?

Ans. He is the man that brought her out of Chickasaw.

Q. What sort of work was Knudsen doing?

Ans. Deck hand on the boat and rigger and fastener.

Q. When he went to lift anything, he would fasten the
68 wires?

Ans. Smith ran the engine.

Q. And he did the fastening?

Ans. Yes, sir.

Q. And did the general deck-hand work on the boat?

Ans. Yes, sir.

Q. When she was on the Alabama Dry Dock being repaired, was he chipping and painting and doing the work?

Ans. Not much of anything—no painting.

Q. He was pottering around on the boat?

Ans. Yes, sir; he was there.

Q. You were paying him $5.00 a day?

Ans. Yes, sir.

Q. From the Alabama, where did you go?

Ans. After they got through with her at the Gulf, she shifted across the river in the big slip and there was a big steamer to come in there and we shifted into Pinto Pass and the Gulf side of the Alabama Dry Dock.

Q. And tied up there?

Ans. Yes, sir; and the carpenters finished the work on her there.

Q. And Knudsen was still on her?

Ans. Yes, sir; and that is where I got rid of him, right there, June the 11th.

Q. June the 11th?

Ans. June the 11th, 1927, is the last day Joe Knudsen ever worked for me.

Q. You paid him off up to that time?

Ans. I did, and my checks will show it.

Q. He was hurt July the 4th; now did you discover, Mr. Benson, that your cable, this valuable cable that was left on the spool, instead of putting all that cable on the drum as you had instructed, did you discover that Knudsen, or someone in charge of that boat, had cut the cable?

Ans. I found that out in Henderson's. I saw some of it wound up on the spool and I asked Charlie Smith who cut the cable and he said, "There is the man right there."

69 Q. Pointing to Knudsen?

Ans. Yes sir, and Knudsen was out there, and I called Knudsen and asked him why he cut that cable and he started a harrangue about it being long enough, and I said, "I know it wasn't long enough."

Q. How did you want your fall?

Ans. I wanted it all put on the drum on the boat.

Q. For what?

Ans. In case of necessity. I would have a four sheave block to drop down in the ship, and the safe working load was eight tons. Four sheave blocks have nine parts. You would figure five times eight is forty. Forty tons would be a safe lift for her.

Q. How did Knudsen have her rigged?

Ans. Two sheaves.

Q. And you wanted her rigged, how?

Ans. I wanted enough wire on the drum so that I could rig a four sheave. That is what I bought the cable for.

Q. What was the effect of his having cut the cable when you rigged it three sheaves?

Ans. He rigged it two sheaves. And when we went to leave the "Alabama" and pick up that stuff on the wharf, when he shoved it through the three sheave and fastened it and pulled up with his wire, that stuff was sixty feet in the air, and hung there, and that is the reason he went to lowering the boom when he went to do his splicing.

Q. If he rigged it three sheaves, it was sixty feet in the air?

Ans. It wasn't long enough to rig it three sheaves, and when he let his wire out on the drum, all that wire stayed suspended.

Q. What did you say to Knudsen about having cut the cable and ruined it?

Ans. Just bawled him out about it. That is all I could do.

Q. What did he say to that?

Ans. He could not say nothing. He contended, at first, that
70 it was long enough, but after he shoved that in there he seen that it was not, and that is when I let him go, after that.

Q. Did you speak to Captain Roberts about what Knudsen had done?

Ans. Yes sir, when Mr. Bell wanted work done at the State Docks Mr. Bell asked me for a on the boat and then I rewired it and everything and rented the boat for the State Docks.

Q. He wanted your boat?

Ans. Yes sir.

Q. What did you say to Captain Roberts then, about the condition of the cable?

Ans. I got to thinking about the cable and telephoned Captain Roberts and asked him to come to my office and he came down.

Q. Who was present at your office?

Ans. My book-keeper, Albertine Lea and Mr. Harrison.

Q. What conversation did you have with Captain Roberts?

Ans. I said, "Captain, what are you going to do about my cable,—cutting my wire," and he said, "I can have that wire spliced for you and you could get service out of it," and Horace, the L & N rigger,—I had sent for him to get him to splice it and he would

not splice it and he said it was a dangerous proposition for a spliced wire on the derrick.

Q. Did you tell Captain Roberts about that?

Ans. Yes sir. And Harrison didn't want me to have the wire spliced. A party wanted to buy the boat and after I consented——

Q. After consenting to do what?

Ans. To have the wire spliced.

Q. In this conversation with Captain Roberts you consented for him to have it spliced?

Ans. Yes sir, to let him have it spliced. And Harrison contended I ought to let him buy a new wire for it, because I could have charged him for the barge.

Q. Who did Roberts say he was going to have splice it?

71 Ans. A Jamaica negro down there that makes mats.

Q. Did that negro splice it?

Ans. He did not. Captain Roberts came to my shop on the 2nd of July and he said he could not get that fellow to go over there, and said, "I am going to take Old Joe over there and make him splice it."

Q. Joe who?

Ans. Joe Knudsen.

Q. Then what happened?

Ans. The next day was Sunday and the Fourth of July was Monday—Floyd Lenis, who was an engineer on the tug, "Sister"——

Q. Who does the tug "Sister" belong to?

Ans. Captain Roberts.

Q. And Floyd Lenis was engineer?

Ans. Yes, sir. They came in my shop and Floyd Lenis had a pair of overalls under his arm, at eight o'clock in the morning of July the 4th, and I asked "where is Joe."

Mr. GRESHAM. We object to any conversation between this witness and Floyd Lenis.

Mr. KILBORN. It is our contention that it was Captain Roberts that was responsible for getting Knudsen on the boat.

The court sustained objection.

Q. Roberts and Lenis came into your shop?

Ans. Yes, sir.

Q. And left your shop?

Ans. To go over the river. That is where they picked up Jerry Woolsey.

Q. Who is he?

Ans. A man I hired two or three days before to look out for me.

Q. Woolsey was only employed?

Ans. Yes, sir.

Q. And Roberts and Lenis came by and picked up Walsh of your shop?

72 Ans. Yes, sir.

Q. And went where?

Ans. Across the river.

Q. What is the next thing you knew about Knudsen being hurt?

Ans. I asked where Knudsen was and they told me he went down Canal Street and had already gone over the river, and when they went over there Knudsen was already over there and had fire up in the boiler.

Q. The next thing you knew about Knudsen getting hurt was what?

Ans. Captain Roberts telephoned me that he had Joe on this side, hurt. "I think he has broke his knee," and asked me did I want to see him.

Q. Had you employed Knudsen to splice the cable?

Ans. No, sir.

Q. Or do anything on the day that he was hurt?

Ans. No, sir; I would not have had him under any circumstances.

Q. And the last time you employed him was June the 11th, 1927?

Ans. Yes, sir.

Q. You were not present when the man got hurt?

Ans. No, sir; Captain Roberts telephoned me and said he was hurt and asked me did I want to see him.

Q. You say this book that I have in my hand shows the movement of the boat correctly?

Ans. From the time I bought it until I sold it to the Alabama Iron Works.

Q. It was kept by your bookkeeper?

Ans. Yes, sir.

Cross-examination by Mr. GRESHAM:

Q. You testified in this case at the hearing before Mr. Crowell, here, did you?

Ans. Yes, sir; I did.

73 Q. I will ask you whether or not, in reference to the conversation had with Captain Roberts, after the accident, when he advised you of Knudsen's injury, if this is true: "Captain Roberts telephoned me at the shop and he says, 'Charlie, I had an accident over there'"?

Ans. He said Knudsen had the accident.

Q. "He says, 'Joe got his leg broke,' and I says, 'Captain, I am sorry he got hurt.'"

Ans. No; he asked me did I want to see Knudsen and I told him I wasn't interested in Knudsen at all, but I was very sorry he got hurt.

Q. Let me get through with the question and then you can answer whether it is so or not—"He says, 'will you come right down there,' and I says, 'I have no interest in Knudsen, I was not interested in him whether he broke his leg or not',"—is that right?

Ans. No, sir; that is not right.

Q. You didn't so testify?

Ans. No, sir. He didn't ask me to come down there. He told me he thought Joe had broken his knee and asked me did I want to see him. My testimony will show that I said I had no interest in Joe Knudsen, whatever, but I was very sorry he had broken his leg.

Q. You didn't testify to this: "I wasn't in him, whether he broke his leg, or not"?

Ans. No; I didn't say whether he broke his leg, or not.

Mr. KILBORN. I think he ought to read all of it.

Q. For what purpose did you purchase that derrick?

Ans. For doing general work.

Q. Where?

Ans. Around Mobile Harbor.

Q. What compensation was paid you for the Harrison job?

74 Ans. $75.00—one day's work.

Q. How much did you get for raising the Baker barge?

Ans. $150.00.

Q. How much did you get from Herndon Radcliff?

Ans. $25.00; and Henderson—I charged him nothing for raising his.

Q. When was the first time you saw that barge after she was brought down from Chickasaw?

Ans. That Saturday when I went over and paid Joe Knudsen and Charlie Smith and another man off. That was the first day I got Beardslee launch and went and paid them off.

Q. Where was she at that time?

Ans. In the Southern Dry Dock slip.

Q. Across the river?

Ans. Yes, sir.

Q. At that time the barge had already raised Harrison's barge?

Ans. Yes, sir.

Q. And Baker's barge?

Ans. No, sir—just Harrison's barge.

Q. Did you examine the fall at that time?

Ans. I just went there and paid them off and came back, and I wasn't there ten minutes.

Q. Who was present at the time you say you first discovered that the fall was improperly cut?

Ans. Charlie Smith and his little son were aboard the boat.

Q. Did you have any discussion with Mr. Knudsen in regard to splicing it, at all?

Ans. In regard to splicing it—do you mean previous to when he did splice it?

Q. Yes, sir.

Ans. Well, he was on the boat. I talked to him about the wire several times and he said he would splice it, but he never did.

Q. How many times was the subject of splicing that wire mentioned between you and Knudsen?

75 Ans. I don't suppose, over twice.

Q. Mr. Knudsen said that he would splice it?

Ans. When he was at the Gulf Dock, he asked me did I want it spliced then, but I had something else for him to do.

Question. What dry dock?

Ans. The Gulf dry dock.

Q. That was when the barge was under repairs?

Ans. Yes, sir; on the dock.

Q. And Knudsen asked you, at that time, if you wanted it spliced?

Ans. He remarked about it one day—about splicing it, but I did not want it spliced at that time, but several times after that I spoke to him about it, but it never amounted to anything. He never spliced it.

Q. What was your reply when he said that he would splice it?

Ans. I just told him to leave it alone. I had something else for him to do. I had six or eight carpenters working there and it wasn't an opportune time for him to splice it. I didn't need it.

Q. If the time had been opportune would it have been agreeable for him to splice it?

Ans. I didn't need it and it wasn't necessary for me to have it spliced on the dock. I could not leave anything while I was there.

Q. If it had been necessary and the time opportune, would it have been agreeable with you for Mr. Knudsen to splice it?

Ans. Yes, sir.

Q. And he offered to splice it?

Ans. Yes, sir.

Q. Do I understand that the Harrison barge was raised on May the 7th?

Ans. No, sir.

Q. Did you testify as to the date?

Ans. No, sir; I did not.

Q. Do you know the date that it was raised?

Ans. Yes, sir.

76 Q. What day?

Ans. I loaned the boat to Captain Roberts on May the 7th—Sunday was the 8th—and brought her down from the dock on Monday and went to Harrison's on Wednesday.

Q. That was the 10th of May?

Ans. Wednesday is the 11th. They went to Harrison Brothers on the 11th of May.

Q. Do you know the date that Captain Baker's barge was raised?

Ans. Yes, sir; I have it right here, taken off the book there that Mr. Kilborn has got—the 16th day of May, on Monday—listed the Baker barge and towed to Henderson. On the 17th she was at Henderson's wharf.

Q. And the date the work was done for Mr. Radcliff?

Ans. It was done when we got through up here on the 19th—the 20th—they got through the 19th and towed her down there at eight o'clock at night, and the next day did the Radcliff work.

Q. Then the boat went to Henderson's?

Ans. Yes, sir; and stayed two days.

Q. And then went to the Alabama?

Ans. Yes, sir; then over to the Alabama and the old Gulf dry dock.

Redirect examination by Mr. KILBORN:

Q. Tell the court what days there, Knudsen had her there in raising Captain Roberts' barge—what days altogether?

Ans. He went there on the 9th of the month, which was Sunday, and he left the 19th at eight o'clock—the night of the 18th he left and went to Radcliff's job.

Q. How many days, at that time, did he have her on his own job?

77 Ans. I used her three days and he had her the balance of the time. Roberts had my boat altogether, counting Sunday, twelve days, but counting from Monday, it would be eleven days.

Q. Eleven days, Knudsen had her, for which you got no pay?

Ans. Yes, sir.

Q. And that was working on the Roberts job?

Ans. Yes, sir—less the three days that I used her.

Q. At the time you say that Knudsen offered to splice her and you told him it wasn't convenient, he was a member of the crew, at that time?

Ans. Yes, sir. I could have made him splice it. He was a member of the crew then.

Q. During the eleven days Knudsen had your boat on the Roberts job, who paid the engineer?

Ans. I did, and Knudsen, too. I paid them both.

Q. Notwithstanding Knudsen was doing his own work?

Ans. Yes, sir; Knudsen will tell you that I gave him his check.

Q. Did either Roberts or Knudsen reimburse you for the pay of the engineer during the time they used your boat?

Ans. No, sir.

Recross-examination by Mr. GRESHAM:

Q. Did you have any other employment for the barge after she came down from Chickasaw, other than the Harrison job or Baker job?

Ans. No, sir.

Q. After she got down here, did you have any other employment for the boat?

Ans. Mr. Bell seen the boat and they wanted to rent it, and he came in and made a proposition to rent the boat, but he got married and then he was off a month and had pneumonia——

Q. Where is that barge, now?

Ans. I sold it to the Alabama Dry Dock and Shipbuilding Company.

78 Q. You sold it to them?

Ans. Yes, sir; in August.

Q. August, 1927?
Ans. Yes, sir; August the 17th.

Re-redirect examination by Mr. KILBORN:

Q. How long have you known Joe Knudsen and Roberts?
Ans. Ten or twelve years, and Roberts all my life. I have been loaning him for thirty years.
Q. You all have always been good friends?
Ans. Yes, sir—that is, to the extent of anything they could get from my shop.
Q. That applies to both Joe and Captain Roberts?
Ans. Yes, sir—always getting something. When they went to raise the "Apollo," Roberts came down and got all my wire sheave blocks and went over there.
Q. And that was all without charge?
Ans. Yes, sir.

Re-recross-examination by Mr. GRESHAM:

Q. After you ascertained that Captain Knudsen had cut your wire, you continued to pay him for his services?
Ans. I paid him up to June the 11th, when I let him go.
Q. What was the date that you ascertained he improperly cut that cable?
Ans. When we went over to Henderson's.
Q. And when was that?
Ans. I could tell you by consulting this paper—witness referring to the paper—Saturday, the 21st of May—that is when I noticed it.
(The witness was thereupon excused.)

79 FLOYD LENNIS, a witness called on behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KILBORN:

Q. You were present when Mr. Knudsen got hurt, were you?
Ans. Yes, sir.
Q. Who were you employed by at that time?
Ans. Captain Roberts.
Q. Beauregard Roberts?
Ans. Yes, sir.
Q. In what capacity?
Ans. Just doing little odd jobs for him on the boat.
Q. You were working on the tug "Sister"?
Ans. Yes, sir.
Q. That boat belonged to Captain Beauregard Roberts?
Ans. Yes, sir.
Q. Who got you to go over there that day?
Ans. Captain Roberts.
Q. Captain Beauregard Roberts?
Ans. Yes, sir.

Q. Where did you see him?
Ans. He came down to the boat.
Q. You were on board the tug "Sister"?
Ans. Yes, sir.
Q. Did he have Knudsen with him when he came down for you?
Ans. No, sir.
Q. Where was Knudsen then?
Ans. Right at that time I didn't know. He told me several days before that he was going to go there one or two days.
Q. Who was going to go?
Ans. Going over to Mr. Benson's derrick.
Q. To do what?
80 Ans. To splice some cable that was cut on the boat.
Q. Who was present when he told you that?
Ans. Nobody but he and I.
Q. He had told you he was going over to do that?
Ans. Yes, sir.
Q. On this morning Knudsen got hurt he came down and got you?
Ans. Yes, sir.
Q. Then where did you go?
Ans. Went down to Mr. Benson's and went over to the place.
Q. What did you do at Benson's place?
Ans. I didn't do anything.
Q. Did you pick up Jerry Woolsey there?
Ans. Yes, sir.
Q. And you and Roberts and Jerry Woolsey went across the river?
Ans. Yes, sir.
Q. Did you find Joe Knudsen there when you got there?
Ans. Yes, sir.
Q. What doing?
Ans. Fixing up lines and things on the boat.
Q. What happened when you got over there?
Ans. The first thing I did was to put some coal on board the derrick and after I got that finished up we were going to turn the derrick around so we could lay the boom down on the dock.
Q. The boom was up in the air?
Ans. Yes, sir.
Q. Who said they were going to turn the boat around; who gave those orders?
Ans. Mr. Joe.
Q. Joe Knudsen?
Ans. Yes, sir.
Q. He directed everything?
Ans. Yes, sir; everything that was to be done. He started getting some lines out on the dock and tying them to some stringers on
81 the dock, and they looked bad and Captain Roberts told Joe not to tie that stuff there; it would not hold, and he never paid him any mind, and I was working on the boat and they got

everything rigged up to swing the boat around to put this boom on the dock, and when he got ready he stood up there and hollered to the engineer to go ahead.

Q. Who was he?

Ans. Mr. Joe Knudsen—and he said, "Go ahead a little," and the engineer swung the boom over and he went ahead on the engine, and when he did he seen the timber or the stringer was giving away, and he stopped the engine, and that time Mr. Joe hollered "Stop her, stop her," two or three times, but the engineer had the thing stopped before he hollered; and the weight of the blocks and the chain was so heavy that it pulled that timber off the dock, and it came down and he had a line tied somehow, and it tripped him and he fell.

Q. He got tangled up in the line?

Ans. Yes, sir. I had went aft on the boat where I could see, all right, but I walked back there because I knew it was dangerous standing up there where he was at.

Q. When he hollered "Stop," the engineer had already stopped?

Ans. Yes, sir.

Q. But the weight of this block and chain pulled the stringer aloose?

Ans. Yes, sir.

Q. How much would that block and chain weigh?

Ans. I don't know, but a couple of tons, I guess, or maybe more or less.

Q. It was a very heavy affair?

Ans. Yes, sir.

Q. Was Mr. Charlie Benson over there at the time he got hurt?

Ans. No, sir.

Q. Mr. Knudsen was giving directions how to do the thing?

Ans. Yes, sir.

82 Q. What was Roberts doing?

Ans. He was around there telling Joe not to tie that stuff up there and fastening a few lines.

Q. What was Jerry Woolsey doing?

Ans. He was engineer on the derrick.

Q. Before that day had you heard Captain Roberts say anything to Joe Knudsen about splicing this wire?

Ans. Well, he did. He told Joe Knudsen that he had to go over there to Mr. Benson's derrick and splice that wire that he had cut. I was on the "Sister" that day when they came down there.

Q. Do you know where that coal came from that you were handling?

Ans. No, sir.

Q. Or who was furnishing it?

Ans. No, sir; I don't remember.

Cross-examination by Mr. GRESHAM:

Q. You say you heard a conversation between Captain Roberts and Knudsen in which Captain Roberts said to Knudsen that Charlie

Benson wanted Knudsen to splice a wire that he, Mr. Knudsen, had cut?

Ans. That happened on the street. I heard Captain Roberts tell Mr. Joe that he had to go over and splice that cable for Mr. Benson.

Q. What did Joe say?

Ans. He said he would go over there and do it.

(Thereupon this witness was excused.)

C. D. SMITH, a witness called in behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KILBORN:

Q. What is your business, now—you work that big lifting crane for the Merchants Transfer Company?

Ans. Yes, sir.

Q. Did you ever work for Mr. Charlie Benson?

Ans. Yes, sir.

Q. In what connection?

Ans. Engineer.

Q. On the "Chickasaw" derrick barge?

Ans. Yes, sir.

Q. Was Joe Knudsen working there at the time?

Ans. Yes, sir.

Q. Do you recall when that dredge was brought down from Chickasaw?

Ans. Yes, sir.

Q. Who brought her down?

Ans. Captain Beauregard Roberts.

Q. Was Knudsen on there then?

Ans. Yes, sir.

Q. What kind of work was Knudsen doing?

Ans. General work on the barge, and rigging.

Q. When you got down to the Southern Dry Dock, what did Knudsen do about cutting the cable or rigging the boat?

Ans. Well, we pulled up in the Southern Dry Dock there, and rigged a new cable on. That is, a part of it.

Q. Did Mr. Knudsen here, cut the cable?

Ans. Yes, sir.

Q. And left some of it on the spool, too?

Ans. Yes, sir.

Q. Had Mr. Benson said anything to him about cutting that cable?

Ans. Yes, sir.

Q. What?

Ans. He told us up at Chickasaw, if we needed any swing cable to cut off, but not to cut anything else.

Q. You had already cut the swing cable?

Ans. No, sir; we had not.

Q. How much did you have to cut for a swing cable?

Ans. Approximately 80 feet.

Q. He said he could cut the swing cable, but not to cut it for anything else?

Ans. Yes, sir.

Q. How long were you over at the Southern, rigging the boat up?

Ans. I don't know, sir. Altogether, we were over there about 10 or 11 days, I guess.

Q. Off and on?

Ans. Yes, sir.

Q. After that cable was cut, did you hear any conversation between Mr. Benson and Mr. Knudsen about its having been cut?

Ans. I heard part of it.

Q. What did you hear?

Ans. I heard Mr. Benson telling he had ruined his cable.

Q. What did he say to that?

Ans. I believe he told him if he thought it was too short he would splice it.

Q. Did he splice it?

Ans. Not then, no sir.

Q. You were not working for Mr. Benson when Mr. Knudsen got hurt?

Ans. No, sir.

Q. When did you leave the "Chickasaw"?

Ans. On or about the 26th of June.

Q. Did Knudsen leave her before then?

Ans. No, sir; Knudsen had done left the boat when I left.

Cross-examination by Mr. GRESHAM:

Q. When you heard Mr. Benson get after Mr. Knudsen and
85 Mr. Knudsen state that he would splice the cable, what was next said—what did Mr. Benson say?

Ans. I think Mr. Benson told him to wait awhile.

Q. Now, as I understand it, the new cable was rigged while the barge was over at the Southern Dry Dock?

Ans. Yes, sir.

Q. And you and Mr. Knudsen had orders from Mr. Benson to rig a new fall on the derrick?

Ans. Yes, sir.

Q. And those orders were given before the barge let Chickasaw—is that right?

Ans. Well, I could not tell. I don't remember just what he said about rigging that cable in there, but anyway he wanted a cable reaved up before we went to doing any heavy lifting.

Q. As a matter of fact, you could not do any lifting at all with the old cable?

Ans. No, sir, not to amount to anything.

Q. There were four sheave blocks?

Ans. Yes, sir.

Q. And you rigged a cable through three sheaves?

Ans. As well as I remember it, we did.

Q. It seemed to you properly rigged, at that time, didn't it?
Ans. Well, I could not say.
Q. What is your best judgment?
Ans. Because I was not experienced in ship work at that time, I could not say.
Q. Did it appear properly rigged to you, at that time—what is your best judgment?
Ans. For short lifting, yes, sir.
Q. You lifted the Baker barge with it that way?
Ans. Yes, sir.
Q. The fall did not part, did it?
Ans. No, sir.
Q. In lifting the Baker barge, the derrick barge itself, was pulled over by the weight?
Ans. It pulled her bow down some.
Q. Did Henderson's barge pull her bow down some?
86 Ans. That was a burned boat that we picked up there, and it pulled her down.
Q. And the cable worked all right?
Ans. Yes, sir.
Q. And didn't break them?
Ans. No, sir.
Q. How about in lifting Mr. Radcliff's pontoons—did the cable break then?
Ans. No, sir; that was a light lift.
Q. When was the last time you have seen that boat?
Ans. Last February was a year ago, I believe.
Q. How was she rigged then?
Ans. I don't know.
Q. You don't know how she is rigged now?
Ans. No, sir.
Q. She is still over at the Alabama?
Ans. Yes, sir; I saw the boat from this side of the river this morning.
Q. After the work of the Southern Dry Dock was concluded and those lifting jobs were concluded the boat was taken over for repairs—general overhauling?
Ans. Yes, sir.
Q. And Captain Knudsen worked on her in the overhauling, scraping and painting and so on, did he not?
Ans. Yes, sir.
Q. Now, is there such a thing as having so much of a fall on a boom and winch that the cable will rub against each other and there will be wear on the cable?
Ans. Unless you use a perch under your topping lift.
Q. Mr. Benson claimed that that cable was about ten or fifteen feet short, was that right?
Ans. I didn't hear him say how much too short it was.

Q. Mr. Smith, don't you remember testifying to that fact when you were down before the deputy commissioner?

87 Ans. I think I testified that the block lacked ten or fifteen feet of reaching down to come inside the ship, didn't I?

Q. And that was what Mr. Benson wanted it for?

Ans. Mr. Benson told us he wanted the block thirty feet below the face of the water.

Q. Mr. Benson said he wanted it to reach down to where he could take machinery, or anything out of the bottom of the ship?

Ans. Yes, sir.

Q. You assisted in rigging that fall, didn't you?

Ans. Yes, sir; I helped Joe rig it.

Q. You had some discussion about where to cut that fall, didn't you?

Ans. Yes, sir; we spoke about that.

Q. And the sum and substance of it was that it was cut at the length where you thought it was best?

Ans. To my judgment, I could not see anything wrong with it.

Redirect examination by Mr. KILBORN:

Q. Was there any discussion about your cutting it—did you tell him that Mr. Benson had said not to cut it?

Ans. Yes, sir; that morning.

Q. Did he say that he was going to cut it, anyhow?

Ans. Well, he said he thought that would be the right thing. That too much cable on the drum would be the wrong thing.

Q. But he did discuss that about them telling him not to cut that cable?

Ans. Yes, sir.

Q. Who paid you the wages while you were on this boat?

Ans. Mr. Benson.

Q. Did Mr. Knudsen pay you anything at all?

Ans. No, sir.

88 The COURT. You were asked about a four-sheave block——

Ans. The way the drum sits on the engine—when this lower spool that carried the fall, would wind up full of wire, the boom cable would come down across that and rub.

Q. That was when it went on the spool?

Ans. Yes, sir.

Redirect examination resumed by Mr. KILBORN:

Q. During the time that you were at the Southern Dry Dock, were you working on the Roberts boat—that is, raising that sunken boat in there—you came down to raise Captain Roberts' sunken boat, didn't you?

Ans. Yes, sir; that was my understanding.

Q. To raise that sunken boat?

Ans. Yes, sir.

Q. You were engaged in doing that pretty much all the time, except when you raised the Harrison boat and the Baker boat?
Ans. Yes, sir.

Recross-examination by Mr. GRESHAM:

Q. Do you know of any work that that dredge was to do, or could have done at Chickasaw, if she had not come down when she did?
Ans. How was that?
Q. Do you know of any employment for that dredge at Chickasaw—any work for her—was there anything to leave her up there for?
Ans. Nothing, only repairs. We were figuring on repairing the machine before she came to Mobile.
Q. She was repaired in Mobile, afterwards.
(The witness was thereupon excused.)

89 JERRY WOOLSEY, a witness called on behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KILBORN:

Q. Are you Mr. Jerry Woolsey?
Ans. Yes, sir.
Q. Were you working for Charlie Benson in July, 1927?
Ans. Yes, sir.
Q. What was your job?
Ans. Engineer on the derrick barge.
Q. Do you remember the morning Mr. Knudsen got hurt?
Ans. On July the 4th.
Q. Were you there when he got hurt?
Ans. Yes, sir.
Q. Who came by and got you that day?
Ans. Captain Beauregard Roberts and Mr. Floyd Lennis.
Q. They came and got you?
Ans. We all went across the river together, from Mr. Benson's shop.
Q. When you got over there was Mr. Knudsen there?
Ans. Yes, sir.
Q. Did you see him when he got hurt?
Ans. Yes, sir.
Q. How did he get hurt?
Ans. A piece of rotten timber swinging off the wharf there, and caught against the tow bits on the barge and the line tripped him up.
Q. Who hitched that line on the timber?
Ans. Mr. Knudsen.
Q. Who was directing how that work should proceed?
Ans. He was doing it himself.
Q. Did he holler for you to stop the engine?
90 Ans. The engine was done stopped when he hollered stop.
Q. You were operating it?

Ans. Yes, sir.

Q. Did you follow the signals that he was giving you?

Ans. I stopped before he gave me the signal to stop, because I saw something was pulling aloose. He told me to swing over and I started to swing and I didn't swing more than three feet and I stopped the boom.

Q. Was that a very heavy block?

Ans. Yes, sir; pretty heavy. I judge two hundred and fifty or three hundred pounds—the block, itself.

Q. That tripped him up and hurt him?

Ans. Yes, sir.

The COURT. What was the line tied to that piece that broke aloose, for?

Ans. To swing the barge around. It was headed broadside and we were going to swing it around so that we could lay the boom down on the wharf.

Q. It was just to turn the boat around?

Ans. Yes, sir.

Mr. KILBORN. What was Beauregard Roberts doing there?

Ans. He was there to assist in splicing. That is all I know of. Mr. Benson told me that Captain Roberts and Joe Knudsen were going over there to splice the cable and I went over there with them to handle the engine.

Cross-examination by Mr. GRESHAM:

Q. You were in the employment of Mr. Charles Benson, at that time?

Ans. Yes, sir.

91 Q. And he paid you?

Ans. Yes, sir.

Mr. KILBURN. We rest.

Mr. BIRCH. On behalf of the deputy commissioner, I offer the record in evidence.

Mr. KILBORN. We object to that as incompetent, irrelevant, and immaterial.

The court overruled the objection and Mr. Kilborn reserved exception to the ruling of the court.

Captain BEAUREGARD ROBERTS, a witness called in behalf of the defendant, after having been first duly sworn, testified as follows:

Direct examination by Mr. GRESHAM:

Q. You are Captain Beauregard Roberts?

Ans. Yes, sir.

Q. Do you knoe J. B. Knudsen?

Ans. Yes, sir.

Q. And Mr. Charlie Benson?

Ans. Yes, sir.

Q. You have known them for some time, Captain Roberts?

Ans. Yes, sir.

Q. You were present at the time Mr. Knudsen, here, was hurt on Mr. Benson's derrick barge, the "Chickasaw"?

Ans. Yes, sir.

Q. That barge was then afloat on navigable waters?

Ans. Yes, sir.

Q. What were the circumstances of your being present?

92 Ans. I was up the river and I came home and my wife said, "Mr. Benson wants to talk with you" and I rang him up, and he told me that Captain Joe had cut the wire on his derrick and that he had a chance to rent it and that he could not do nothing with it because the wire was cut—the State docks wanted to rent it and the wire was cut, and he wanted to know where Joe was, and I turned to my wife and asked her and she said, "he has gone to Pascagoula," and I asked her when he was coming back and she said, she didn't know, but she thought the next day, so I wrote a note and said Mr. Charlie said he would like to get that wire spliced. He could not do anything with the boat unless he had the wire spliced up and I told him I would try to get hold of Joe and see if I could get him to splice the wire. He said he had to have the boat to be there the day after the Fourth of July.

Q. What day was this conversation?

Ans. That was on Saturday before the Fourth of July. I had just come from up the river, and I wrote a note and left it on his bureau and my daughter was in the house and I carried my wife down to Biloxi and I left word that I would come back to Mobile and left word to my daughter to give the note to Captain Joe when he came up, and I came back on the night before the Fourth of July, and I went to my room and went to bed and I found he was in bed and next morning I got up Knudsen and got coffee and we went down and started down to the boat, and I told him, "you better go on down and get the derrick ready and I will come down and go by the boat and get Mr. Lennis to come down and help you,"—"I want to get through with it, the daughters want to go out to dinner and I want to go with them," and he said, "I have some tools on a boat, that I want," and I asked him where they were, and he said, "hanging in the cabin on the deck," and I said I would get them, and I went and got the tools and Mr. Lennis and I went down there and when we went down there they had gone over to the derrick.

Q. Who was there on the barge when you got on the barge?

93 Ans. When I went to the derrick there was an engineer there and Captain Knudsen, and I don't know whether anybody else, or not, was there.

Q. What was your interest in going over there that morning?

Ans. To try and help Captain Joe splice that cable so that Mr. Benson could get the barge to hire to the State dock. I went, merely, to help him to get the wire spliced. Mr. Benson told me he had cut it and had promised to splice it.

Q. That conversation you say you had with Mr. Benson the Saturday before Mr. Knudsen was hurt—was that in person or over the telephone?

Ans. Over the telephone.

Q. When is the first that you had known of the fact that Mr. Benson's fall had been cut?

Ans. That was the first time I knew of it being cut.

Q. Did Mr. Benson say anything to you about your being responsible for it?

Ans. No, sir. He said Joe promised to splice it.

Q. Now, that barge was, I believe, a derrick barge?

Ans. Yes, sir.

Q. It has an A frame?

Ans. Yes, sir.

Q. And a boom?

Ans. Yes, sir.

Q. This fall runs from a drum at the winch, along the underside of the boom to a block at the head of the boom?

Ans. Yes, sir.

Q. And that was a four-sheave block?

Ans. Yes, sir. It could be made even more sheaves than that. It might have been five or six sheaves—a big block.

Q. Then, it went to another sheave hanging from the boom?

Ans. Yes, sir.

Q. What is the topping lift?

94 Ans. The topping lift is what hoists the fall, that hoists the load.

Q. How long is that boom—where abouts is that A frame—about the center of the barge?

Ans. Yes, sir.

Q. Does the boom extend over the end of the barge?

Ans. Yes, sir; the boom is probably seventy-five or eighty feet long.

Q. Captain Knudsen was hurt, was he, on that derrick barge that Monday?

Ans. Yes, sir.

Q. Did he seem to be in much pain?

Ans. Yes, sir.

Q. What did you do with him?

Ans. I got a launch as quick as I could and carried him over and got the marine hospital to send for him and take him out there.

Q. Did you communicate with Mr. Benson?

Ans. Yes, sir. I told him Captain Joe had been hurt and his leg broken on the derrick, and I was trying to get him to the marine hospital.

Q. What did he say?

Ans. He said that was all right.

Q. Was that all he said?

Ans. Yes; that was all he said.

Q. Did you ask Mr. Benson to assist you in getting medical attention?

Ans. No, sir.

Q. Captain, will you look at this certificate and see if that is your signature?

Ans. Yes, sir.

Q. Tell the court the circumstances of that certificate.

Ans. Well, I rang up the marine hospital and told them a man was hurt aboard the derrick and when I took him out and went into the office and made out this certificate, I thought Captain Knudsen had been on my boat, and he had been on there, off and on, for
95 some time—probably a year or two, and when he left and went to work for Mr. Benson, was the time he left the tug, and I thought he was entitled to go to the marine hospital.

Q. Was that stated to the marine hospital at the time?

Ans. Yes, sir.

Q. Did you state to the marine hospital that Mr. Knudsen was employed by you at the time he was hurt?

Ans. No, sir.

Q. Had you had any connection with that derrick barge "Chickasaw" before you went over the morning of Mr. Knudsen's injury; had you towed her or had anything to do with her before that time?

Ans. Yes, sir; I brought her down from Chickasaw and put her over at the Southern docks. Joe was aboard of her and said I should carry her there.

Q. What were the circumstances connected with your bringing her down?

Ans. He told me he wanted it towed down there and I went up and brought her down.

Q. Captain Joe Knudsen told you that?

Ans. Yes, sir.

Q. In what business were you engaged at that time?

Ans. I was engaged in towing on the river here.

Q. For whom?

Ans. Towing lumber for the Mobile River Saw Mill Company at Mount Vernon.

Q. Had Mr. Knudsen worked for you at all, after he went to work for Mr. Benson?

Ans. No, sir.

Q. And was he employed by you the morning he was hurt?

Ans. No, sir.

Q. Did you have any further connection with that derrick barge; her name is the "Chickasaw"?

Ans. Yes, sir.

Q. Did you have any further connection with the "Chickasaw" after you brought her down, and up to the day of Mr. Knudsen's injury?

96 Ans. After I put her over there I didn't have any connection with her at all until the morning we went there to tow her away, or the evening we went there to tow her away.

Q. Where did you tow her to?

Ans. To the east side of the river and from there down to Mr. Radcliff's wharf. Mr. Knudsen said Mr. Benson ordered him to bring her down there to pick up some boilers, and I carried her down to Mr. Radcliff's wharf.

Cross-examination by Mr. KILBORN:

Q. How long have you known Mr. Charlie Benson?

Ans. I suppose fifteen or twenty years.

Q. And Mr. Knudsen?

Ans. Well, I met Captain Joe out there the second year of the war, at Chickasaw.

Q. Mr. Knudsen lived at your house until the time that he was injured?

Ans. He had a room at my house at the time this thing occurred.

Q. You and Mr. Knudsen and Mr. Charlie Benson have always been close friends, for a long time?

Ans. Yes, sir.

Q. And doing each other mutual favors all along?

Ans. Yes, sir.

Q. And you had a derrick barge of your own?

Ans. Yes, sir.

Q. And Joe Knudsen got a job to raise the sunken "Apollo" over the river?

Ans. Yes, sir.

Q. And you loaned Joe Knudsen your derrick barge, as an act of friendship, to use in that operation?

Ans. Yes, sir.

Q. And while it was over there a norther came up and sunk your boat in the slip?

Ans. Yes, sir.

97 Q. And you had no way to raise it?

Ans. No, I loaned it to Captain Joe, and I considered it his business to get it up.

Q. Did you talk to Mr. Charlie Benson about borrowing Mr. Benson's derrick to raise your sunken boat?

Ans. No, sir; I did not.

Q. You didn't talk to him?

Ans. No, sir.

Q. Do you remember meeting him in the Square one night, with Joe Knudsen, and having a conversation with him?

Ans. I met him several times, but I don't know.

Q. You were in the habit of meeting him in the Square a good deal?

Ans. Yes, sir.

Q. And Joe Knudsen would be along?

Ans. Sometimes and sometimes not.

Q. Would you say that such a conversation did not exist?

Ans. I don't remember having a conversation asking Mr. Benson for the derrick, because Joe said he had made arrangements with Benson for the derrick. I don't know how he got it.

Q. You don't deny having such a conversation in the Square with Mr. Benson, but you simply don't remember it?

Ans. I don't remember, and I am pretty sure I never said anything to him about the derrick.

Q. Your recollection is that Joe Knudsen told you he had arranged with Mr. Charlie to borrow that derrick to use?

Ans. Yes, sir. He didn't say he borrowed it. He said he had made arrangements for the derrick.

Q. After he told you that you went over to Chickasaw with the tow boat and toward the derrick down to the Southern?

Ans. Yes, sir.

Q. And never charged Charlie Benson anything for that?

98 Ans. No, sir.

Q. You understood he was letting Joe have the barge, and you were glad to get it and didn't expect to charge him?

Ans. Mr. Benson can not say that I charged him anything for the derrick, or Captain Joe, either one.

Q. Captain Joe set about raising your boat across the river?

Ans. Yes, sir.

Q. He pulled the deck-house off it with that derrick, didn't he?

Ans. I don't know. I guess he did. It was pretty well broken up when I got there.

Q. He pulled the kitchen off?

Ans. Yes, sir.

Q. And, finally, he lifted it up?

Ans. Yes, sir.

Q. And you all set it up on the bank?

Ans. Yes, sir.

Q. And you were there?

Ans. Yes, sir.

Q. After he got through with that you hitched on to Mr. Benson's derrick with your tug and towed it where?

Ans. To Radcliff's dock.

Q. And left it there?

Ans. Yes, sir.

Q. And you made no charge for that?

Ans. No, sir.

Q. When did Mr. Charlie say anything to you about Mr. Joe Knudsen having cut his cable?

Ans. When I came back from up river at night, over the telephone.

Q. Is that the only time he ever mentioned the matter to you?

Ans. I think he talked a good deal after that about it, but up to that time that was the first time. After he was hurt he kept talking about the cable and about getting it spliced and he said he didn't

know what he was going to do, and finally, he told me somebody at the L. & N. was going to splice it.

99 Q. When was that?

Ans. After Joe got hurt.

Q. Don't you recall that before Joe got hurt—for the purpose of refreshing your memory—before Joe got hurt, Mr. Charlie called you up and asked you to come to the shop and you came by there, and didn't Miss Albertine Lea, Mr. Benson's bookkeeper—you know her?

Ans. Yes, sir.

Q. And she was there, and Mr. Herring, here to-day as a witness, he was there also, and this happened before Mr. Knudsen got hurt, and that he told you then that he was looking to you to get that cable spliced, and you all sat there and discussed it quite a while, and finally you told him you would try to get that Jamaican negro that makes maps to splice it?

Ans. All of that happened after Captain Joe got hurt.

Q. You are sure of that?

Ans. Yes, sir; because I went to Biloxi until the 4th of July and never talked to him.

Q. Do you remember having any conversation about the splicing when Miss Albertine was present, and Mr. Herring?

Ans. I remember talking to Mr. Benson two or three times afterwards, and he said a man at the L. & N. was going to splice it, and he then said he could not splice it, and I said I have had a negro on my boat that could splice that in a couple of hours.

Q. You say that conversation was had after Captain Joe got hurt?

Ans. Yes, sir; afterwards.

Q. The day you left with Mr. Knudsen, and the day Knudsen got hurt—tell how he got hurt.

Ans. When I got over there he was on the bow of the boat.

Q. Knudsen?

Ans. Yes, sir. And I got over there with Mr. Floyd Lennis and Captain Knudsen said he wanted to swing the barge around

100 and let the boom down on the wharf so that he could unreave it, and he picked up a line hanging to the boom and carried it over and made it fast on the wharf, and he tied it around a little stringer on the wharf. I told him "you better not tie that there—put it on the piling," and he said, "you go back there and attend to those lines on the stern of the barge, I will attend to this," and I went back, and I heard somebody holler and I turned around and looked and I saw his heels up in the air, and his head down, and I got them to slack down on the wire and brought him to town.

Q. He was directing how things were to be done that day?

Ans. Yes, sir.

Q. You had carried Mr. Lennis over there with you?

Ans. Yes, sir.

Q. And he was working with you?

Ans. Yes, sir; for me.

Q. As a matter of fact, you went down and got Lennis and came by Benson's shop and picked up Jerry Woolsey?

Ans. We never went to Benson's shop. We went right on the wharf.

Q. You never went by and got Mr. Woolsey?

Ans. No, sir; I think he was already over there.

Q. Had you made any arrangements to charge Mr. Benson for your services that day?

Ans. No, sir.

Q. Or for Floyd Lennis' services?

Ans. No, sir.

Q. What was your idea of assisting in that?

Ans. I wanted to get the wire spliced because he told me Joe had cut it and he had a chance to rent it if he had it spliced.

Q. What concern was it of yours that Joe had cut it?

Ans. He claimed that Joe had cut the wire in raising my boat, and of course, if he cut the wire in raising it, I wanted to do all I could to help him get it back.

101 Q. You went over there that day to assist in this operation out of the consciousness that he was a good enough friend to loan you his boat and you would be good enough friend to help fix the cable?

Ans. Yes, sir.

Q. You had no idea that he was to pay either you or Knudsen for what you were doing over there that day?

Ans. No; I knew he wasn't going to pay me, because I never made him any charge for it.

Q. And you knew he didn't expect to pay Knudsen?

Ans. Joe told me he had arranged for the derrick, and I didn't know whether Joe was going to pay him or he pay Joe, or how. He had been working for Mr. Benson.

Q. He had quit working for Mr. Benson some time before he got hurt there, hadn't he?

Ans. I don't know exactly how long he was off the barge. The barge was over the river when I came back home, and he was away, but I don't think it was very many days.

Q. You have talked to Mr. Benson a good deal about this case since it came up, haven't you, off and on?

Ans. Yes, sir.

Q. And told him more than once that you thought it was a shame that Joe was suing him?

Ans. I told him I thought it was a shame for him to sue Mr. Benson, and I even got my wife to go to Captain Joe and tell him I thought he ought not to sue Mr. Benson. I really could not see if he loaned him the barge and he hurt himself, and I could not see why it was a case against Mr. Benson.

Q. Did you tell Mr. Benson that you knew that Joe wasn't working for him?

Ans. No; I didn't tell him that, because I didn't know any arrangements that he had in regard to his work with Benson, but I tried to stop the lawsuit in any shape or form between them. They
102 were both friends and I didn't want to see them fussing and fighting.

Q. You felt that it was unjust for him to sue Mr. Benson?

Ans. Certainly I did, and I feel so now, so far as I am concerned.

The COURT. You say, in discussing the first arrangement for getting the barge out and raising your barge—how did it come about that Knudsen told you he had made arrangements for the use of that derrick barge—how did that come about?

Ans. He was working on Mr. Benson's derrick up in Chickasabogue—digging it out of there for him—and that was the time he had moved my derrick and was using it.

Q. Was he using your derrick when your derrick was sunk?

Ans. Yes, sir; he wasn't using it that very day, but he had been using it and tied it to the wharf.

Q. That was for you?

Ans. No, sir; that was for himself. I didn't charge him for the derrick.

Q. That was Joe, and not Benson.

Ans. It was Joe.

Q. It wasn't Benson's job at all?

Ans. No, sir.

Q. It was tied there and sunk?

Ans. Yes, sir.

Q. Then what conversation took place between you and Knudsen in reference to raising that barge?

Ans. The dry-dock people said they wanted to get the barge out of there—she was in the way—and I got ahold of Captain Joe and asked him about it, and he said, well, he had made arrangements with Mr. Benson to use his derrick and pick her up, and as
103 soon as he could he would pick her up, and to help the thing along I went up there and towed her down and got her over there.

Cross-examination resumed by Mr. KILBORN:

Q. Mr. Knudsen had contracted, on his own account, to raise the "Apollo"?

Ans. Yes, sir.

Q. And he borrowed your boat and you loaned it to him as an act of friendship in that job?

Ans. Yes, sir; and she was sunk. I wasn't charging him anything for it.

Q. Is the whole of this paper in your handwriting, or just the signature?

(Mr. Kilborn referring to the certificate, which had been introduced in evidence.)

Ans. It is all in my handwriting.

Mr. KILBORN. That is the master's certificate that he gave at the marine hospital.

Q. Can you read this down here where it says "Nativity,"—you wrote the same thing that is printed in your handwriting?

Ans. Yes, sir.

Q. Read this there, where it says "color of eyes."

Ans. "Color of eyes, blue,"—brown, isn't it?

Q. What is this "In my employ"?

Ans. It was in my employ.

Q. You wrote, in your handwriting, that he had been in your employ on the boat?

Ans. Yes, sir.

Q. Can you read the next thing?

Ans. That is, off and on, for ten years. He had been in my employ, off and on, for ten years.

Q. The words, "off and on" are not there, though, are they?

103 Ans. No, sir; they are not, but he was on the boat.

Q. All that is on this paper is the statement that he had been in your employ?

Ans. Yes, sir.

Q. Without any statement that it was "off and on"?

Ans. I meant it over ten years back, up to that time. From the time that he first started to work for me on the boat.

Redirect examination by Mr. GRESHAM:

Q. How much experience has Mr. Knudsen had as a rigger?

Ans. I guess a good lot. He was under me for two years at Chickasaw.

Q. Right after the War?

Ans. Well, during the War.

Q. And he has been working, off and on, ever since?

Ans. Ever since the War, off and on.

Q. You say he was a competent, experienced rigger?

Ans. Yes, sir.

(The witness was thereupon excused.)

J. B. KNUDSEN, a witness called on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct examination by Mr. GRESHAM:

Q. Is your name J. B. Knudsen?

Ans. Yes, sir.

Q. You are one of the respondents in this case?

105 Ans. Yes, sir.

Q. And you were hurt on the derrick barge, "Chickasaw," that belonged to the complainant in this case, on July the 4th, 1927?

Ans. Yes, sir.

Q. Tell the court about the condition of your leg?

Ans. My leg is practically stiff—without any motion.

Q. Is it any shorter than the other?

Ans. Yes, sir; I have the heel built up on my right foot about an inch higher than my left foot, and it is still shorter.

Q. What is the length of your right leg shorter?

Ans. I think it is about two inches shorter, or over two inches or more.

Q. You have heard the testimony in regard to your being hurt on that derrick barge?

Ans. Yes, sir.

Q. Well, are the circumstances as stated by the witnesses correct?

Mr. KILBORN. We object to the form of that question.

Q. You were hurt on the barge "Chickasaw" in navigable water?

Ans. I was on the barge "Chickasaw," in navigable water, and there was a seagoing ship laying within fifteen feet of us.

Q. What experience have you had as a rigger?

Ans. All my life rigging and sailing.

Q. How many years?

Ans. Forty years.

Q. The time that you worked for Mr. Benson—that has been testified about—is that the only time you have been employed by Mr. Benson—when did you go to work for him on this barge "Chickasaw"?

Ans. I went to work for him on the barge "Chickasaw" up at Chickasaw.

106 Q. What kind of work were you doing there?

Ans. We were using a bucket to dig out mud with, to take her out of there.

Q. What did Mr. Benson tell you he was going to do with that derrick barge?

Ans. He said, when we got her out of here we want to rig her up for heavy lifting in the river, and he also brought me out a spool——

Q. That was a spool of what?

Ans. Of wire.

Q. For what purpose?

Ans. To rig up Mr. Benson's barge with.

Q. For what part of the barge?

Ans. The topping lift and the hoisting fall.

Q. What was the condition of the topping lift and the hoisting fall?

Ans. It was three quarter wire, and that wire was there since the War, and they were using it there in the War and that wire was exposed to all kinds of weather.

Q. Was it safe?

Ans. No, sir; it was not safe. It was decayed and rusty in places.

Q. Did you dig her out?

Ans. The first thing we did when the wire came up—we put a topping lift on that boom to keep that boom from dropping down on us. That was the most important thing of all things, and Mr. Benson asked me could we use that three quarter wire for the bucket to dig out with, and I said, "we can use it and save that new wire,

and if it does break it can't hurt anything," and he said we would take chances on it and use that three quarter wire until we got out, and we would reave up the new wire.

Q. Did you dig you way out of the slip?

Ans. Yes, sir.

Q. Then what happened?

Ans. When we got out there Benson ordered us—he was telling me that Beauregard Roberts is coming up with his tug boat and take us down to the Southern Slips, and he said, "when you
107 get down there that will be a good chance for you to rig up that long fall with the new wire."

Q. Had you borrowed Captain Roberts' derrick barge?

Ans. The barge that was sunk in the slip, there?

Q. Yes.

Ans. I will explain how that came about. The Southern Dry Dock people were using Captain Roberts' barge in there and they had me as an operator on that barge, and when I was operating that barge for Beauregard Roberts I got paid from the Southern people and Captain Roberts got paid, also.

Q. Did you have the job of raising the "Apollo," over there?

Ans. I had a job raising the "Apollo," yes.

Q. Were you using Captain Roberts' barge in that connection?

Ans. I was.

Q. And you left it there when you went to work for Mr. Charlie Benson?

Ans. Yes, sir.

Q. They were going to take care of that barge and the barge sunk?

Ans. Yes, sir; over in the slip, and they were going to watch it.

Q. When the derrick barge was brought down from Chickasaw, where was it put; in the Southern Slip?

Ans. In the Southern Slip.

Q. Then what was done?

Ans. Mr. Charlie Benson said, "When she goes in there you will have a good chance to rig up that new wire. We are going to have some heavy work in this river, and we knew that old wire was impossible."

Q. Did you rig that fall then?

Ans. Yes, sir; I rove up three sheaves.

Q. How many sheaves were in the block?

Ans. Four sheaves.

Q. Explain your reason for so reaving it.

108 Ans. I reaved up three sheaves. They were very large blocks—five hundred (500) pounds apiece, and I rove up three sheaves, and that made it six parts, and a standing part came down, which made it seven parts, and Charlie Benson said, "Joe, don't use any more wire in that fall than you can possibly help, because we use that new wire for other purposes, like swinging cable

and that bull wheel, and that guy for the boom, and we have one guy on each side and if anything should happen to the old guys." I took this up with Engineer Smith, who had been on the boat longer than I have, and he said, "Yes, that is right, because we can not put any more wire in that fall because it interferes with the topping lift."

Q. Explain how it does.

Ans. They get so much wire on that drum that it makes a friction with the other wire that holds up the boom.

Q. What is the topping lift made fast to?

Ans. It comes down through the mast and goes over the heel of the boom and goes back up again to the top drum and by having too much wire on the lower drum it gets up against the other drum with the topping wire on it.

Q. Did you rig that fall with three sheaves?

Ans. We rove it up and then Smith says, "We have plenty of steam power here, and if you rig up three sheaves I won't have to use half of the steam power to put the bow of that barge under the water."

Q. Did you consider, at that time, from your experience, that that fall was properly rigged, under all circumstances?

Ans. Yes, sir; and I had the engineer there, Mr. Smith, and he suggested doing it that way, and why I done that, Mr. Benson said, "Joe, how are you going to rig that fall," and I said, "three sheaves,—do you think that is all right," and he said, "yes."

Q. When was that?

Ans. Before I rove it up.

Q. You had that conversation with Mr. Benson?

109 Ans. Yes, sir; and Benson said, "Knudsen, you are the rigger—use your own judgment,"—and that is the reason I took it up with the engineer.

Q. What happened after you rigged the fall?

Ans. Then we rigged up the fall and everything was satisfactory—three sheaves and a standing part, down to the bottom block.

Q. Then what was done?

Ans. Then we hove the boom up like that, at about a 95 degree angle.

Q. What was done with the derrick barge?

Ans. We went down to Harrison's Dock and we lifted up a sunken boat that lay on the end of his ways. Mr. Harrison wanted that boat out of there.

Q. What sort of boat was it?

Ans. A river boat. I believe she had been a stern wheeler.

Q. You lifted that boat up with that fall?

Ans. Yes, sir; and she had big boilers on there, machinery and all.

Q. What did she weigh?

Ans. I know I lifted 40 ton and more, dead weight.

Q. Then what happened?

Ans. We went back up to the Southern Dock, and then there was a call came that Baker wanted it and we went and took Baker's derrick up and took it down to Harrison's Dock.

Q. Then what happened?

Ans. Then I think we went back up to the Southern Docks and then I went to work with Beaury Roberts' boat, and I tried to do some work on that in between times, and a call came again, and to my recollection I had Dr. Roberts' boat up, and a call came again to come down to Radcliff's Wharf and pick up those boilers for Radcliff.

Q. Then what was done?

Ans. Then we went over to Henderson's Dry Dock. Mr. Charlie Benson had an old sunken barge, and he said, "Knudsen, do you think we can raise that barge up?" and I said, "We can try it, I believe we can," and he says, "can you fasten those wires so that they can hold that barge up," and I said, "I will try it—I think so," and I put the wires on that, in the way I thought it would be all right, and then I notified Mr. Benson, "that we are ready now," to make the lift, and Mr. Benson changed his mind, and he says, "Knudsen, never mind. You can take the wires off that barge and put it on the 'Chickasaw,' and we are going over on the dry dock at the Alabama."

Q. Did you go back on dry dock?

Ans. Yes, sir.

Q. What was done on dry dock?

Ans. General repair work of all kinds.

Q. What did you do?

Ans. The same thing—scraping and painting.

Q. Did you do scraping and painting, yourself?

Ans. Yes, sir.

Q. Did you assist to put a roof on the cabin?

Ans. I did.

Q. You used hammer and nails, yourself?

Ans. Yes, sir.

Q. Did you do any work on that fall?

Ans. Yes, sir; when we came over on the docks, Mr. Benson brought out a big pair of blocks with six sheaves in those blocks, and he said, "Knudsen, do you think those blocks will be better than we have" and I said, "no, the blocks we have are the best blocks," and he said, "Knudsen, I want you to try and rig this wire up into those six sheave blocks and let me see how they go," and naturally, if I rigged up the wire into three sheave blocks and cut my wire for that, they are not going to fit those six sheaves, and I rove it up six sheaves, and Benson said, "Now, the wire is too short," and I said, "Sure it is." Then we took the blocks off again, and rigged up the other four sheaves.

Q. Did you do that work?

Ans. Yes, sir; I rove up those other blocks that we had already three sheaved, and I was attending to work for Mr. Benson.

111 Q. Was anything said about splicing?

Ans. Sure. He said, "Knudsen, don't you think that wire is too short," and I said, "That wire is not too short; that wire is just right, if you take my advice, because I cut it to be O. K. and do the work as it is; and if it is any longer it will do more harm than good." "Now, if I used those six sheave blocks it would be too short, but when I rove up the new fall you were going to have the blocks that we had." He said, "Well, Knudsen, if I want that wire spliced I will call on you."

Q. What did you say?

Ans. I says, "All right." He says, "Can you do that work?" and I said, "Yes; I can—that is my profession."

Q. Have you spliced falls before?

Ans. Yes, sir; several of them.

Q. How many?

Ans. A good many of them.

Q. Was that part of your work as a rigger?

Ans. Yes, sir. You cannot call yourself a rigger if you cannot splice a wire fall, and I had rove up those three sheaves like it had been before, and we were still laying on the Alabama Docks there and there wasn't much to do, and Benson said to me, "Knudsen, rig up those six sheave blocks again," and I did, and I left it there, and I oiled up his wire, and he asked me to do that so that it would not rust, and we left the blocks in that condition with the six sheaves, and I went to cleaning up the engine and putting the roof on the cabin.

Q. Was anything else said about splicing up to the time of leaving his employment?

Ans. Yes, sir; he says this, "Knudsen, if I decide I want this wire spliced, can you do it," and I said, "Sure, I can," and he says, "Will you splice this wire for me if I ask you to," and I said, "I will come and splice it for you; yes." I said, "Do you want me to splice it now," and he said, "No; I am in no hurry; we will wait a while," and I worked until I didn't think there was anything more to do and I went to Charlie and I told him I didn't think there
112 was any work left for us to do. "The boys ain't doing much, and I know I ain't doing anything, and I want to quit," and he said, "All right, Knudsen, any time I want you to work, will you come back and work," and I said, "Yes; I will work for you, Charlie," and he said, "You can splice this wire when I call on you," and I said, "I will," and then the first thing you know, I had a telephone call from Charlie Benson.

Q. Who gave you the message?

Ans. I had a telephone call from Charlie Benson and he said, "Joe——

Mr. KILBORN. We object unless the witness states that it was with Mr. Benson.

Q. Did you talk to Mr. Benson?

Ans. Yes, sir. I said, "Who is this?" over the phone, and he said, "Charlie Benson," and he said, "Joe, I want this wire spliced in a few days. I have got a young man engineer and I think he is all right," and I said, "It don't make any difference with me if the man is all right," and he said, "I will let you know in a few days," and then I went down the coast a few days, and when I came back—I think it was Saturday night—I came back and there were two slips written; one pinned onto my pillow in my room and the other on the dresser.

Q. Where were you living at that time?

Ans. With Captain Beaury Roberts. And stating, "Captain Knudsen, will you come down Monday morning and splice this wire for Mr. Charlie Benson? He has some work to do with the derrick on Tuesday and he wanted it done on Monday." And this happened to be the Fourth of July, and I thought to myself, well, I will go down and splice it. I promised him to do it and I will go, and I says to Captain Roberts, "I will splice it."

Q. You went down Monday to splice the wire?

Ans. Yes, sir.

Q. What would you have to do to splice the wire? Did you have to lower away the blocks?

118 Ans. The barge was laying on the north end of the Alabama docks, that I call Pinto Pass, and the boom was facing to the eastward, into the open water, and we had to turn this barge this way, so that I could lay that boom down on the wharf to unloosen the block.

Q. Did you have to unrig the fall as it was rigged, and then rig it back after the splice was made?

Ans. Yes, sir.

Q. That was what you were preparing to do when you hurt your leg?

Ans. Yes, sir.

Q. Have you been able to do any work since you were hurt?

Ans. No, sir.

Cross-examination by Mr. KILBORN:

Q. This phone conversation that you just told about—you didn't tell us about that on the other trial of this case, did you?

Ans. With the suffering I had——

Q. You didn't mention it on the other trial, did you?

Ans. With the suffering——

Q. Just answer the question: did you mention it?

Ans. No, sir.

Q. This is the first time you brought it out?

Ans. It just came to my mind. The suffering I had——

Q. On the other trial you were asked all about the circumstances of your employment and told nothing about this phone conversation with Mr. Benson.

Ans. I don't think I thought of it. I am not sure whether I did or not, but I have been studying it.

Q. You have been staying at the marine hospital with nothing to do but think about the case, and you thought about all of this?

114 Ans. I have been out there because I was disabled to go anywhere else, and I have been in pain.

Q. How long have you known Captain Beaury Roberts?

Ans. A good while.

Q. And known Mr. Charlie Benson a long time?

Ans. Yes, sir.

Q. And all three of you were good friends?

Ans. Pretty fair.

Q. You were pretty close friends, were you?

Ans. I don't know. I know of one thing, whenever I work for Charlie Benson, I expect pay for it.

Q. You borrowed Captain Beaury Roberts' barge without expecting to pay him for it?

Ans. In a way, I paid him. I made trips on his boat up and down the river.

Q. A sort of mutual friendship feeling between you and Beaury Roberts?

Ans. Yes, sir.

Q. You had Beaury Roberts' barge, raising the "Apollo"?

Ans. Months before that.

Q. You were using Beaury Roberts' barge across the river for that purpose?

Ans. Not only for that purpose; the Southern Docks used the barge, also.

Q. You did have a contract to raise the "Apollo"?

Ans. I did, several months before that.

Q. What were you to do?

Ans. Try to float that thing.

Q. For which you were to get so much money?

Ans. If I floated her; yes.

Q. And, you borrowed Beaury Roberts' barge in order to carry out that contract?

Ans. Yes, sir.

Q. And it sunk over there?

Ans. Yes, sir.

Q. In a norther?

Ans. In a norther.

115 Q. Didn't Beaury Roberts come to you and tell you that he had arranged with Charley Benson to use the barge?

Ans. I don't know.

Q. Didn't you testify, on the previous trial of this case, as follows: "The first thing that Beaury told me about it, is that Benson is going to let me have the derrick for a day or two." Did you state that?

Ans. When we left Chickasaw.

Q. Just answer the question, whether you testified to that or not.

The COURT. Before you left Chickasaw.

Ans. Before I left Chickasaw, Beaury Roberts came up for the barge and said, we were going down to the Southern Docks with the barge, and if I remember right, he said we could use Benson's derrick in between times.

Q. Didn't you testify to this on the other trial: "Captain Beaury Roberts was the first one that told me about that, about using the barge, and said, 'Charlie is going to loan us his barge a day or two'?"

Ans. Yes, sir; I believe so.

Q. Is that what happened?

Ans. Yes, sir.

Q. Do you remember meeting Mr. Charlie Benson one night, in the square, along with Captain Beaury Roberts, and the conversation having taken place about the use of Captain Benson's barge in raising the Roberts' barge?

Ans. I remember being in the square, and they were talking different things between themselves that I was not interested in, and what the conversation was, I don't know.

Q. Was there anything said, in that conversation, about using the Benson barge in raising Roberts' barge?

Ans. Not in the square—I don't know.

Q. Was there anything said in the other conversation?

116 Ans. They were talking. I wasn't much interested.

Q. Where were you?

Ans. I was sitting on the end of the bench.

Q. What were they talking about?

Ans. I don't know.

Q. Was there anything said, at all, about raising the barge that you had and that had sunk?

Ans. I don't know nothing about it.

Q. I will ask you, on the previous trial of this case, whether you were asked this question and made this answer: "On what arrangement did you have the use of Mr. Benson's barge, in raising the Roberts barge—Ans. Captain Beaury Roberts said we could use it—Benson said we were going to have his barge one or two days."

Ans. That is right, and Beaury said that Benson said to Beaury, or someone was telling me that we could have the barge for one or two days.

Q. Captain Beaury Roberts came to you and told you he had arranged with Mr. Benson to get his barge to raise his barge?

Ans. I don't know whether it was Beaury or Benson, but someone told me.

Q. You testified, in the other hearing, that is was Beaury that told you.

Ans. I think it was Beaury—that is my recollection, but I am not sure.

Q. And Beaury came and got you with his tug and towed you to the Southern dry dock?

Ans. Yes, sir.

Q. For the purpose of raising his barge?

Ans. Yes, sir; for the purpose of doing work in the river—they got the new fall.

Q. Up to that time you didn't have any work?

Ans. Harrison was telling me about wanting his barge raised, before we got there, I believe.

Q. Are you positive?

Ans. I know it came up before I had my fall rigged up.

117 Q. Will you swear that Harrison told you?

Ans. Yes, sir.

Q. Let me finish the question—will you swear that before you got to the Southern with this derrick that he wanted to use it in raising his barge?

Ans. Yes, sir; I think there was talk of it down on the wharf before I got to the docks; but just as I got to the Southern docks Harrison was there, and he said he wanted that barge.

Q. You are not positive about having seen Harrison before, are you?

Ans. Yes, I think so. He was telling me he wanted that barge raised.

Q. You got to the Southern and you started to rig this fall up and you cut Mr. Benson's cable in the operation?

Ans. I knew all about raising Harrison's barge before I put the new fall on there. I had been notified of it.

Q. Mr. Benson had asked you not to cut his cable, hadn't he?

Ans. No, sir, he asked me to put in the new fall.

Q. Did he tell you he didn't want that cable cut, except for the topping lift and that bull wheel?

Ans. No, sir, he said, "you want to use that cable for the new fall."

Q. When you went to cut it, did you have any conversation with Smith, the engineer?

Ans. We laid the boom on the wharf and rove up the fall and cut it where we thought it would be best.

Q. I will ask you whether or not Smith told you, at that time, that Mr. Benson had said he didn't want the cable cut?

Ans. He didn't want it cut for any purpose except the fall—that is what Benson meant by that.

Q. He had said he didn't want it cut?

Ans. He said he had work to do in this river, and he had to have that new fall rove in, and that is what we came down to the Southern dock for, and that is what he shipped the spool of new wire up there for.

118 Q. When did you first talk to Mr. Benson, or when did Benson first kick to you about cutting the cable?

Ans. Sometime afterwards, Benson said, "Knudsen, do you think that is long enough," and I said, "Yes."

Q. When was that?

Ans. A long time afterwards.

Q. Before you quit working on the derrick?

Ans. Yes, sir.

Q. How long before?

Ans. A couple of weeks.

Q. Do you know whether Benson said anything to Captain Roberts about it?

Ans. Not to my knowledge.

Q. On that day you were hurt you had no conversation with Benson, at all?

Ans. He says, "Knudsen, will you come back and work for me when I call on you"?

Q. I asked you to tell me whether you had any conversation with Benson on the day that you were hurt?

Ans. No, sir.

Q. Where were you when you had the telephone conversation you told about?

Ans. I was out to Beaury Roberts' house and it rang, and it says, "Is this you, Joe," and I said, "Yes, who is this—Charlie Benson," and he said, "Yes," and he said, "Joe, can you come down and splice my wire"?

Q. How long was that before you came down and spliced it?

Ans. Five or six days—about five days before I got hurt.

Q. Did you mention that to Captain Roberts?

Ans. I don't know if I did or not. I think I told Captain Roberts that Benson wanted me to come down and splice that wire.

Q. How long were you at Pascagoula?

Ans. Saturday morning—I think I went on the night trip.

119 Q. You went down Saturday?

Ans. No, I said it was Friday night, to my recollection.

Q. And you came back the following Saturday night?

Ans. Saturday night.

Q. You had been down there, how long?

Ans. Just a day and a night.

Q. Do you know what day Mr. Benson paid you off on that dredge boat?

Ans. No, I don't.

Q. About June 11th, wasn't it?

Ans. I think it was about that time, the 11th or the 15th.

Q. Did you ever call on Benson for any money for the work you did on the day you got hurt—July the 4th?

Ans. I never did see Benson from the time I was up there until we met up here in court.

Q. You wrote him a note and asked him to tell you how long you had worked for him?

Ans. Yes, sir.

Q. And in that note you said nothing about his owing you any money?

Ans. He asked me what I wanted to know that for, and he said, "Yes, I am going to try to get your compensation or get something."

Q. Who said that; you?

Ans. I never saw Charlie Benson until the time of the last trial.

Q. And in the note you wrote him, you didn't say anything to him about his owing you for the time you worked, the day you got hurt?

Ans. I don't think I did.

Q. All you asked him was to tell you how long you had worked there for him during the time you had worked for him?

Ans. Yes, sir.

Q. When was the last time you worked on the tug "Sister"?

120 Ans. I don't know.

Q. Tell the court your best judgment, as to when you last worked on her?

Ans. I worked on the "Sister" very often off and on.

Q. Had you worked on the "Sister" at all from February, 1921, up to the day that you got hurt?

Ans. Yes, sir; I think I made a trip with the old man up and down the river a day or so.

Q. Was that before you got paid off on Mr. Benson's dredge, or afterwards?

Ans. That was before I got paid off, I believe.

Q. After Benson paid you off the "Chickasaw," did you work on the "Sister" any more?

Ans. Yes, I worked on the "Sister," off and on.

Q. Let me get this straight. After Mr. Benson paid you off from the "Chickasaw" on June 11th, did you work on the tug "Sister"?

Ans. I don't know.

Q. What is your recollection?

Ans. I can not say.

Q. Had you gotten any money from Mr. Roberts from June the 11th up to the time that you were hurt?

Ans. No, sir.

Redirect examination by Mr. Graham:

Q. Did you, at my instructions, go to, or communicate with, Mr. Benson, asking him for the dates of your employment with him?

Ans. Say that again.

Q. Did you, at my instructions, communicate with Mr. Benson and ask the dates of your employment by him?

Ans. Yes, sir.

Mr. Graham. Have you got that note, Mr. Kilborn?

Mr. Kilborn. Yes, here it is.

(Mr. Kilborn produced a paper.)

Q. Is that the note Mr. Kilborn is referring to, wherein you did not demand wages—have you had any communication with Mr. Benson since you have gotten hurt?

Ans. The only communication I had, to my recollection,—I asked Mr. Benson how long I worked for him and when I went to work and the time I quit work—to my recollection.

Q. Is that your handwriting?

Ans. No.

Q. Was it written for you?

Ans. I think so.

Mr. GRESHAM. I offer that letter in evidence.

Q. Were you employed by Mr. Benson, of the Benson Sheet Iron and Metal Works at the time you were hurt?

Mr. KILBORN. We object to that because it invades the province of the court.

The court overruled the objection.

Ans. Yes, sir.

Mr. GRESHAM. In connection with the cross-examination of the witness, I want to offer in evidence the witness' testimony before the deputy commissioner with regard to that telephone call, on page 48. I want to offer, specifically, pages 47, 48, and 49, simply as explaining that portion of the cross-examination.

Q. What was your wage rate paid you by Mr. Benson?

Ans. Five dollars ($5.00) a day.

Q. Did you work six days a week?

Ans. Yes, sir.

(The witness was thereupon excused.)

Mr. GRESHAM. The respondent thereupon, rested.

Miss ALBERTINA LEE, a witness called on behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KILBORN.

Q. Do you work for Mr. Charlie Benson?

Ans. Yes sir.

Q. How long have you worked for him?

Ans. Since the 19th of July, 1921.

Q. In what capacity do you work there?

Ans. As bookkeeper and typewriter.

Q. Has he any other office help besides you, there?

[illegible] sheet shop, there?

[illegible] Sergeant Roberts?

[illegible] him?

Ans. [illegible] I worked for Mr. Benson.

[illegible] at the shop?

[illegible] talking to Mr. Benson at [illegible] splicing that wire, across the [illegible]

Ans. How was that?

Q. Did you see Captain Beauregard Roberts at Mr. Benson's shop in conversation with Mr. Benson, before Mr. Knudsen got hurt?

Ans. Yes, sir.

Q. Did you ever hear the conversation between them, about splicing a wire?

123 Ans. Yes, sir.

Q. Tell the court what the conversation was.

Ans. One morning about ten or eleven o'clock, Mr. Benson called up and got Captain Roberts on the telephone and said, "I want you to come down to the office. I want to see you."

Q. Did he come down after that?

Ans. I went to dinner and when I came back, fifteen or twenty minutes after half past one, Captain Roberts came in, and Mr. Benson and Captain Roberts talked about splicing this wire.

Q. Was anybody else present besides them?

Ans. I think Mr. Herring was in the office.

Q. What was the conversation?

Ans. Captain Roberts tried to talk Mr. Benson in to splicing this wire.

Q. What did Captain Benson say to him about the wire having been cut? Was he saying that Roberts was responsible for it?

Ans. He said, "Cap., what are you going to do about my wire."

Q. What did Captain Roberts reply?

Ans. Captain Roberts said, "you can splice that wire and it will be just as good spliced as it was before it was cut."

Q. Did they discuss the splicing of the wire, then?

Ans. Yes, sir; and Mr. Benson told him Mr. Horace Becker, the agent for the L. & N. told him not to have the wire spliced, and Mr. Herring, also, said that the wire had a tendency to pull out or buckle up in those little levers.

Q. What did Captain Roberts say about splicing the wire?

Ans. Captain Roberts told him, "I have a wire spliced on my boat that has been spliced five years and has given perfect satisfaction."

Q. What did Roberts say he would do about it?

Ans. He said, "I will get the wire spliced, and I will get the Jamaican negro on the wharf there, to splice this wire."

124 Q. That is all the conversation?

Ans. That is all I remember.

Q. Do you remember whether they had any conversation after that about splicing this wire?

Ans. No, sir; I don't remember.

Q. That is the only conversation you know of?

Ans. Yes, sir.

The Court. Do you know whether that conversation took place before Mr. Knudsen was hurt, or not.

Ans. Yes, sir; it happened before the Fourth of July, on about a Friday.

Cross-examination:

Q. Will you explain, while you are clear that it happened—was there anything at the time to call that conversation to your attention; anything at that time to impress it on your memory?

Ans. Nothing, other than Mr. Benson had put it up to Captain Roberts to have this wire spliced.

Q. That was about two years ago?

Ans. It was before the Fourth of July. It was on a Friday, the conversation I am talking about.

Q. Can you explain just how you are able to fix it; what was the thing about the conversation that fixes it in your memory so clearly as being before the 4th of July?

Ans. Because the 4th of July is when he was supposed to have been hurt.

Q. Did you know he was hurt, then?

Ans. No, sir; it was three or four days after that.

Q. Where were you on the Fourth?

Ans. On the Fourth I guess I was at home, or maybe at the park.

Q. Do I understand that you are testifying that this conversation was had on a Friday before the Fourth?

Ans. About on a Friday. It wasn't on a Saturday, because I never work after one o'clock on Saturday.

125 Q. When was it that the question of that conversation between Captain Roberts and Mr. Benson was ever brought to your attention? Have you talked about it to anybody at all?

Ans. No; I haven't talked about it.

Q. In other words, there has been no discussion by you with anybody in regard to that conversation, up until to-day, is that right?

Ans. Nobody has talked to me about splicing the wire.

Q. I am speaking about the conversation between Captain Roberts and Mr. Benson. Have you discussed that with anybody at all, since the time of that conversation before to-day?

The Court. Has Mr. Benson talked to you or the lawyer talked to you?

Ans. Mr. Kilborn asked me what I knew about it.

Q. When was that? The last two or three days?

Ans. Yes sir. I was in Mr. Kilborn's once two or three days ago.

Q. Did the question of what took place in that conversation between Mr. Benson and Mr. Roberts—had that ever come up before?

Ans. No sir, I wasn't in this at all.

Q. What impressed it on your mind that that conversation was had before July the 4th—were you employed by Benson before the fourth?

Ans. I was with Mr. Benson since July, 1921.

Q. Continuously?

Ans. Yes sir.

Q. What is it that fixes it so clearly in your mind?
Ans. I told you—Joe was hurt on the 4th of July.
Q. Was anything said, at that time, about Captain Joe splicing it?
Ans. I never heard that conversation at all. Captain Roberts told Mr. Benson that he would have a Jamaican negro to splice this wire.
126 Q. Mr. Knudsen's name wasn't mentioned in connection with it at all?
Ans. I didn't hear it.
Q. Was there anything particular to call your attention to that conversation then, more so than any other conversation?
Ans. Sure, because several people advised him not to have it spliced.
Q. Did you hear the conversation between Mr. Benson and Mr. Becker about it?
Ans. Yes sir.
Q. And anybody else?
Ans. Yes sir, Mr. Herring.
Q. When was that?
Ans. On a Friday or Thursday before he got hurt.
Q. It all happened about the same time?
Ans. Yes sir, practically the same time.
(The witness was thereupon excused.)

V. E. HERRING, a witness called on behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KNUDSEN:

Q. What is your business?
Ans. Machinery.
Q. Where is your place of business?
Ans. New Orleans.
Q. Are you engaged in the buying and selling of machinery?
Ans. Yes sir—usually plants, and then I list other machinery on a commission.
Q. Do you know Mr. Charlie Benson?
Ans. Yes sir.
127 Q. Do you know Captain Beauregard Roberts?
Ans. Yes, sir.
Q. Were you ever in Mobile on any business of your own, in June or July 1927?
Ans. Yes sir.
Q. What was that business?
Ans. I made an appraisal of the Southern dry dock in the latter part of June, right after the 15th of June, and appraised the machinery, buildings and property, and on the 12th of July we sold it at auction.

Q. While you were over here, were you at the shop of Mr. Benson, on an occasion of any conversation between Mr. Benson and Captain Roberts, about the splicing of a cable that had been cut?

Ans. Yes, sir; several times.

Q. Tell the court your recollection of that conversation.

Ans. Well, on one occasion, I went down to get Mr. Charlie. We used to go down and go to dinner every night and I had my car and drove down to the shop and I was waiting for Mr. Roberts to come down, and we were there on the shop floor and Mr. Roberts came and he said, "Mr. Roberts, when are you going to get that cable spliced for me—I need that derrick bad. I had it rented," and Mr. Roberts said, "I am going to have it spliced for you right away—there is a Jamaican that makes mats, here on the wharf that said he would do the work, and I am going to take it over there and get it spliced," and Mr. Charlie asked me what I thought about splicing the cable, and I told him I didn't like it, and Mr. Roberts told him, "that is all right, Charlie, a spliced cable will hold; I had them spliced on my derrick boat and used cable, and they never come apart."

Do you recall whether this conversation was before or after July the 4th?

Ans. It was before.

128 Cross-examination by Mr. GRESHAM:

Q. What was the date of the conversation?

Ans. It was some time the latter part of June. I could not tell you the date. I went down there every day of the world, after I came from the Southern dock, and we would go to dinner together.

Q. The latter part of June?

Ans. Yes, sir; it was before the sale.

Q. What day was the sale?

Ans. The 12th of July.

Q. What is it that fixes it in your mind as being in June?

Ans. Because it was when I came over to appraise the yard, and before I got it ready for the sale, and I am positive of that.

Q. When were you first asked if you remembered that conversation?

Ans. Oh, some time ago.

Q. How long ago?

Ans. When this suit was first filed against Mr. Benson.

Q. You didn't testify at the hearing before Mr. Crowell, here, did you?

Ans. No sir.

Q. Was there anything in particular, to call your attention to that conversation?

Ans. Yes, sir; Mr. Benson asked me if I remembered any time down there when Mr. Roberts was down there.

Q. Then you started remembering for Mr. Benson?

Ans. No, sir; I told him about several conversations. Mr. Roberts was there several times.

Q. Did you hear Mr. Knudsen's name mentioned in reference to the splicing?

Ans. No, sir—yes, sir; I did. He asked him— well, not Knudsen— but he said "Joe," and Mr. Benson said, "I thought you said
129 you were going to get Joe to splice it," and Mr. Roberts said, "Joe is off digging treasure and I can not get hold of him."

Redirect examination by Mr. KILBORN:

Q. He said he was off digging treasure?

Ans. Yes, sir; he said he was off digging treasure and I cannot get hold of him.

Q. Mr. Knudsen is a diver and really does dig for treasure sometimes?

Ans. I never saw Mr. Knudsen.

(The witness was thereupon excused.)

WILLIAM HARRISON, a witness called in behalf of the complainant, after having been first duly sworn, testified as follows:

Direct examination by Mr. KILBORN:

Q. Are you a member of the firm of Harrison Brothers that runs a ship ways?

Ans. Yes, sir.

Q. You know Mr. Charlie Benson?

Ans. Yes, sir.

Q. How long have you known him?

Ans. All my life, since I was six or seven years old.

Q. Do you remember the occasion when Mr. Benson's derrick barge, "Chickasaw," came down to the Southern dry dock split there?

Ans. I know about the time.

Q. Did you, or your firm, at that time, have some boat on your ways that you wanted to get lifted?

Ans. We had the "Elizabeth O," that had burned.

Q. Did you make any arrangements with that derrick barge?

130 Ans. I rang up Benson's office.

Q. Who did you make the arrangements with?

Ans. I think with Mr. Benson's bookkeeper, and Mr. Benson, too. I think she got him to the phone.

Q. Miss Albertine?

Ans. Yes, sir; I rang her up and she got Mr. Benson.

Q. When did you do that; before or after the boat got down to the Southern?

Ans. After it was at the Southern.

Q. After Mr. Benson's boat was at the Southern?

Ans. Yes, sir.

Q. Do you remember how long it had been there?

Ans. Two or three days.

Q. You saw it there?

Ans. Yes, sir; I saw it there before it moved down to my place.

Q. You saw it before it moved to your place?

Ans. Yes, sir.

Q. And it was then that you made up your mind to get it for your purpose?

Ans. Yes, sir.

Q. Did you see Joe Knudsen across the river and talk to him about it?

Ans. No, sir.

(There was no cross-examination of this witness, and the witness was thereupon excused.)

CHARLES BENSON, recalled as a witness in his own behalf, after having been first duly sworn, testified further, as follows:

Direct examination by Mr. KILBORN:

Q. Mr. Benson, at the time you let Joe Knudsen go, on June the 11th, did you have any conversation with him about his coming back to splice that wire?

181 Ans. No, sir; I would not have had him back under any circumstances.

Q. Did you ever, at any time, have any conversation with him, that he was to come back at some later date to splice the wire?

Ans. No, sir.

Q. You heard Mr. Knudsen's testimony here about a phone conversation that he claims to have had with you shortly before he went to splice the wire, did you?

Ans. No, sir; I never heard the sound of his voice from the day I fired him until I was up in the court before Mr. Crowell, or seen him.

Q. You never saw him or heard from him from June the 11th up to the time you were in the trial before Judge Crowell?

Ans. No, sir; I never did.

Cross-examination by Mr. GRESHAM:

Q. You haven't any feeling towards Mr. Knudsen, have you?

Ans. I do; yes, sir. He has caused me a good deal of expense and worry.

Q. Over this suit?

Ans. Yes, sir.

Q. You have no friendly feelings towards him?

Ans. No, sir; none in the world.

Q. In fact, you dislike him very much?

Ans. I dislike him very much.

Redirect examination by Mr. KILBORN:

Q. You feel that he has brought a very unjust suit against you?

Ans. Yes, sir.

Q. And in violation of your standing friendship he has sued you?

132 Ans. Yes, sir; him and Captain Roberts has framed this suit up on me.

(The witness was thereupon excused.)

J. B. KNUDSEN was recalled by the defendant and testified further, as follows:

Direct examination by Mr. GRESHAM:

Q. Have you seen this derrick barge lately?

Ans. Yes, sir.

Q. How is she rigged?

Ans. The same way as I had her rigged. They are using her at the Alabama dry dock, and the operator told me he has lifted as much as forty tons and she is rigged the same way that I had her rigged and with the same blocks that I had her rigged up with.

(The witness was thereupon excused.)

(Both the complainant and the respondent thereupon rested.)

[File endorsement omitted.]

133 *Record of proceedings before Deputy Commissioner Crowell which was offered in evidence on July 3rd, 1929, at hearing of cause before Honorable Robert T. Ervin, judge*

United States Employees' Compensation Commission, seventh compensation district. In the matter of the claim for compensation under the longshoremen's and harbor workers' compensation act. J. B. Knudsen, claimant, against Charles Benson and/or Benson Sheet Iron & Metal Works, employer. Compensation order. Award of compensation. Case No. 93-1.

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been held in conformity with law, the deputy commissioner makes the following:

FINDINGS OF FACT

That on the 4th day of July, 1927, the claimant above named was in the employ of the employer above named, in Mobile County, in the State of Alabama, in the seventh compensation district, established under the provisions of the longshoremen's and har-

134 bor worker's compensation act; that at said time the employer had not secured the payment of compensation under said act; that on said day claimant herein, while performing service for the employer upon the navigable waters of the United States sustained personal injury resulting in his disability while he was employed as a rigger preparing to splice a wire fall on a vessel while said vessel was floating upon said waters, the fall broke loose, striking

him, and knocking him down and dragging him with his right lower extremity caught, resulting in partially ankylosed right knee, fracture of right femur with posterior displacement, with 1¾ inch shortening of said extremity.

That the employer had notice and knowledge of said injury as provided by said act.

That the medical, surgical, and hospital treatment required in the attempt to completely cure and relieve the claimant from effects of said injury was furnished by the marine hospital at Mobile, Alabama, for which treatment said hospital is going to make no charge.

That the average annual earnings of the claimant at the time of said injury amounted to the sum of $1500.00.

That as a result of said injury the claimant sustained temporary total disability from July 4, 1927, to November 22, 1928, both dates inclusive, covering a period of 72 4/7s weeks, and he is entitled to 72 4/7s weeks compensation for such disability at the rate of $19.23 a week.

That as a result of said injury claimant has a permanent partial disability consisting of 65% (sixty-five per cent) loss of use of his right leg.

That the difference between 40 weeks and said 72 4/7s weeks is 32 4/7s weeks, which when added to 288 weeks makes 320 4/7s; that 72 4/7s weeks deducted from 320 4/7s weeks equals 248 weeks, and 65% of 248 weeks equals 161.2 weeks, and the claimant is entitled to 161.2 weeks compensation for such permanent partial disability at the rate of $19.23 a week.

That Attorneys Pillans, Cowley and Gresham, the claimant's attorneys, have rendered legal services to said claimant and the reasonable value of such services is the sum of $630.00 which is approved by the deputy commissioner in said sum; that said attorneys are entitled to a lien upon award for compensation in said sum of $630.00.

Upon the foregoing facts the deputy commissioner makes the following:

AWARD

That the employer, Charles Benson, and/or Benson Sheet Iron & Metal Works, shall pay to the claimant J. B. Knudsen compensation as follows:

The sum of $19.23 a week beginning July 4, 1927, for 233-27/35 consecutive weeks, less $630.00 payable direct to Attorneys Pillans, Cowley & Gresham.

Given under my hand at New Orleans, Louisiana, this 20th day of December, 1928.

LETUS N. CROWELL,
Deputy Commissioner, Seventh Compensation District.

LNC:mt

PROOF OF SERVICE

I hereby certify that a copy of the foregoing compensation order was sent by registered mail to the claimant and the employer at the last known address of each as follows:

J. B. Knudsen: U. S. Marine Hospital, Mobile, Alabama.

Charles Benson, and/or Benson Sheet Iron & Metal Works: 1101 Savannah St., Mobile, Alabama.

LETUS N. CROWELL,
Deputy Commissioner.

Mailed December 26, 1928.

136 Penalty for private use to avoid payment of postage, $300. Postmark of delivering office and date of delivery: Mobile, Ala., Dec. 27, 1928, 3 p. m. Post Office Department—official business. Registered article No. 27068. Insured parcel No. —. Return to U. S. Empl. Comp. Comm. Street and number, or post office box: 307 Customhouse Bldg., New Orleans, Louisiana.

RETURN RECEIPT

Received from the postmaster the registered or insured article the original number of which appears on the face of this card.

(Signature of name of addressee:) J. B. KNUDSEN.
(Signature of addressee's agent:) M. D. CLARKE.
Date of delivery, 12-27, 1928. Form 3811.

Penalty for private use to avoid payment of postage, $300. Postmark of delivering office and date of delivery: Mobile, Ala. Dec. 28, 1928, 1 p. m.

137 Post Office Department—official business. Registered article No. 27069. Insured parcel No. —. Return to: (Name of sender) U. S. Emp. Comp. Comm. Street and number, or post office box: 307 Customhouse Bldg., New Orleans, Louisiana.

RETURN RECEIPT

Received from the postmaster the registered or insured article, the original number of which appears on the face of this card.

(Signature or name of addressee:) CHARLES BENSON,
(Signature of addressee's agent:) MRS. D. P. HOWELL.
Date of delivery, 12/27, 1928. Form 3811.

Postmark of mailing office: New Orleans (Customhouse Sta.), La., Dec. 26, 1928.

Receipt for registered article No. 27068. Registered at the post office indicated in postmark. Fee paid 15 cents. Class postage —. Return receipt fee —. Spl. Del'y fee —. Delivery restricted to addressee in person, or order. Accepting employee will place his initials in space indicating restricted delivery.

Postmaster per ———.

Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry fees and indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; Postal Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for foreign countries. Claims must be filed with postmasters within one year from date of mailing.

Form 3806 (Rev. 6-29-27).

Postmark of mailing office: New Orleans (Customhouse Sta.), La., Dec. 26, 1928.

Receipt for registered article No. 27069. Registered at the post office indicated in postmark. Fee paid 15 cents. Class postage —. Return receipt fee —. Spl. Del'y fee —. Delivery restricted to addressee in person, or order.

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per _____.

Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry fees and indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; Postal Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for foreign countries. Claims must be filed with postmasters within one year from date of mailing.

Form 3806 (Rev. 6-29-27). Filed Dec. 26, 1928.

LEROY N. CROWELL,
Deputy Commissioner.

Treasury Department, United States Public Health Service, Office of Medical Officer in Charge

EXTRACT FROM CLINICAL RECORD

Name, Joseph Knudsen. Occupation, 1st mate. Age, 62 years. Last vessel, derrick-barge "Chickasaw." Furnished hospital care

[illegible] July 4, 1927, to May 15, 1928. Continues in hospital. Passed outpatient care from ——, 192—, to ——, 192—. Diagnosis: Fracture, femur, right, supra-condylar, with posterior displacement and a vertical intro-condylar fracture also.

HISTORY OF ILLNESS OR ACCIDENT AS ELICITED FROM PATIENT

Patient states that on July 4th, 1927, while employed on the derrick-barge "Chickasaw," he was struck by a piece of pulley when a line pulled loose. The right leg was twisted to one side, followed by severe pain and swelling in the right knee. Completely disabled.

140

CONDITION OF PATIENT UPON ADMISSION

Admitted by ambulance suffering considerable pain and severe shock, with deformity of right knee from fracture lower end of femur.

DIGEST OF TREATMENT GIVEN

7/4, on admission: Opium and hot water bags for pain. X-ray examination and fixation of right knee with sand bags.

7/8: Operation, general anesthetic: Skin incision to bone. Steinman pin inserted through condyles and leg placed under traction under suspension in Balkan frame.

8/9: Operation: Removal of Steinman pin, plaster dressing applied.

8/27: Plaster dressing removed. X ray taken.

10/27: General anesthetic, operation, split patella incision for removal bone-block.

11/5: Plaster dressing removed. Physiotherapy treatment begun.

3/24: Walking brace applied. Physiotherapy treatment continued.

CONDITION OF PATIENT

At present, undergoing treatment.

Continues slow general improvement. Up and about with assistance of crutches and knee-brace. Right knee ankylosed in semiflexed position, with permanent deformity and disability.

REMARKS

To include available data of previous service admissions, transfers, or discharge of patient

Present status, right knee: Moderate flexion, deformity of 165°. Almost complete ankylosis with only 20° motion. Circumference of knee larger than left knee.

142 Right leg: One and three-quarters inches shortening.
Disability: At present time there is total temporary disability. Permanent disability of about 65% expected.

[SEAL.] FRANCIS STURGIS,
Surgeon, U. S. P. H. S. in Charge.

(Station) U. S. Marine Hospital,
(Address) Mobile, Alabama.
May 16, 1928.

This form to be used for the convenience of firms or other interested persons, where the information has been authorized by the patient and the issue thereof authorized by the Surgeon General.
Form US-226 B

United States of America—United States Employees' Compensation Commission

In the matter of the claim for compensation under the longshoremen's and harbor workmen's compensation act. J. B. Knudsen, Claimant, against Charles Benson, Benson Sheet Iron & Metal Works, Employer. Case No. 93–1. Notice of Hearing.

To CHARLES BENSON,
Northwest Water and Palmetto Streets, Mobile, Ala.

142 You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Letus N. Crowell, deputy commissioner, 7th compensation district of the United States Employees' Compensation Commission, at U. S. court room, Federal Court House Bldg., in the city of Mobile, Alabama, on the 20th day of November, 1928, at 9 o'clock a. m. of that day.

In testimony whereof, the undersigned, a deputy commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at New Orleans, La., this 24th day of October, 1928.

LETUS N. CROWELL,
Deputy Commissioner, 7th Compensation District.

RETURN OF SERVICE

I certify that a duplicate/original of the within notice of hearing was (strike out method not applicable) sent by registered mail to the person named herein on October 24, 1928.

M. I. TOLLEY,
Clerk-Stenographer.

Penalty for private use to avoid payment of postage, $300.
Postmark of delivering office and date of delivery: Mobile, Ala., Oct. 25, 1928, 7 p. m.

Post Office Department—official business. Registered article No. 25984. Insured parcel No. —. Return to U. S. Employees Comp. Comm. Street and number, or post-office box, 307 Cus. House St., New Orleans, Louisiana.

RETURN RECEIPT

Received from the postmaster the registered or insured article, the original number of which appears on the face of this card.

(Signature or name of addressee:) CHAS. BENSON. (Signature of addressee's agent:) ——— ———.

Date of delivery, Oct. 26, 1928. Form 3811.

Postmark of mailing office: New Orleans (Customhouse Sta.), La., register, Oct. 25, 1928.

Receipt for registered article No. 25984. Registered at the post office indicated in postmark. Fee paid, 15 cents. Class postage, —. Return receipt fee, —. Spl. del'y fee, —. Delivery restricted to addressee in person or order.

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per ———.

Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

144 Registry fees and indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second class, not indemnified, 15 cents; domestic third class, indemnified up to $25, 15 cents; Postal Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for foreign countries. Claims must be filed with postmasters within one year from date of mailing. Form 3806 (Rev. 6-29-27.)

Form US-226 B.

United States of America—United States Employees' Compensation Commission

In the matter of the claim for compensation under the longshoremen's and harbor workers' compensation act. J. B. Knudsen, claimant, against Charles Benson, Benson Sheet Iron & Metal Works, employer. Notice of hearing. Case No. 93-1.

To Attorney VINCENT P. KILEORN,

First National Bank Bldg., Mobile, Alabama.

You are hereby notified that upon application made by 145 claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before

Letus N. Crowell, deputy commissioner 7th compensation district of the United States Employees' Compensation Commission, at U. S. Court Room, Federal Court House Bldg., in the city of Mobile, Alabama, on the 20th day of November, 1928, at 9 o'clock a. m. of that day.

In testimony whereof, the undersigned, a deputy commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at New Orleans, La., this 24th day of October, 1928.

LETUS N. CROWELL,
Deputy Commissioner 7th Compensation District.

RETURN OF SERVICE

I certify that a duplicate/original of the within notice of hearing was (strike out method not applicable) sent by registered mail to the person named herein on October 24, 1928.

M. I. TOLLEY,
Clerk-Stenographer.

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office and date of delivery: ———, Ala., Oct. 25, 1928, 1.30 p. m.

Post Office Department—official business. Registered article No. 25985. Insured parcel No. —.

Return to: U. S. Employees Comp. Com. Street and number, or post office box, 307 Cus. Hs. Bl., New Orleans, Louisiana.

RETURN RECEIPT

Received from the postmaster the registered or insured article, the original number of which appears on the face of this card.

(Signature or name of addressee:) VINCENT F. KILBORN.

(Signature of addressee's agent:) ———.

Date of delivery, Oct. 25, 1928. Form 3811.

Postmark of mailing office: New Orleans (Custom-House Sta.) La. Registered Oct. 24, 1928.

Receipt for registered article No. 25985. Registered at the post office indicated in postmark. Fee paid, 11 cents. Class postage, —. Return receipt fee, —. Spl del'y fee, —. Delivery restricted to addressee in person or order.

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per ———.

Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

147 Registry fees and indemnity.—Domestic letters and mailed parcels indemnified for $50 or less, 15 cents; for over $50 but not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; Postal Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for foreign countries. Claims must be filed with postmasters within one year from date of mailing. Form 3806 (Rev. 6-29-27)
Form US-226 B.

United States of America—United States Employees' Compensation Commission

In the matter of the claim for compensation under the longshoremen's and harbor workers' compensation act. J. B. Knudsen, Claimant, against Charles Benson, Benson Sheet Iron & Metal Works, Employer.

Notice of hearing. Case No. 93-1

To J. B. KNUDSEN,
U. S. Marine Hospital,
Mobile, Alabama:

You are hereby notified that upon application made by yourself, an interested party in the above-entitled claim, a hearing on
148 such claim is hereby ordered, to be held before Letus N. Crowell, deputy commissioner 7th compensation district of the United States Employees' Compensation Commission, at U. S. Court Room, Federal Courthouse Bldg. in the city of Mobile, Alabama, on the 20th day of November, 1928, at 9 o'clock a. m. of that day.

In testimony whereof, the undersigned, a deputy commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at New Orleans, La. this 24th day of October, 1928.

LETUS N. CROWELL,
Deputy Commissioner, 7th Compensation District.

RETURN OF SERVICE

I certify that a duplicate/original of the within notice of hearing was (strike out method not applicable) sent by registered mail to the person named herein on October 24, 1928.

M. I. TOLLEY,
Clerk-Stenographer.

Penalty for private use to avoid payment of postage, $300. Postmark of delivering office and date of delivery.
Post Office Department—official business. Registered article No. 25068. Insured Parcel No.
Return to U. S. Employees' Comp. Com. Street and number, or post office box: 307 Cus. Hse. Bl., New Orleans, Louisiana.

RETURN RECEIPT

Received from the postmaster the registered or insured article, the original number of which appears on the fact of this card.

(Signature or name of addressee:) J. B. KNUDSEN.

(Signature or addressee's agent:): M. D. CLARKE,

Date of delivery, 10-25, 1928. Form 3811.

Postmark of mailing office: New Orleans, Custom House Sta., La., Oct. 24, 1928.

Receipt for registered article No. 25983. Registered at the post office indicated in postmark. Fee paid, 11 cents. Class postage, —. Return receipt fee. Spl. del'y fee, —. Delivery restricted to addressee in person or order.

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per —.

Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry fees and indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; Postal
150 Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for foreign countries. Claims must be filed with postmasters within one year from date of mailing. Form 3806 (Rev. 6-29-27).

Form US-226 B.

United States of America—United States Employees' Compensation Commission

In the matter of the claim for compensation under the longshoremen's and harbor workers' compensation act. J. B. Knudsen, claimant, against Charles Benson, Benson Sheet Iron & Metal Works, employer. Notice of hearing. Case No. 93-1.

To PILLANS, COWLEY & GRESHAM,

Van Antwerp Bldg.,

Mobile, Alabama.

You are hereby notified that upon application made by claimant, an interested party in the above-entitled claim, a hearing on such claim is hereby ordered, to be held before Letus N. Crowell, deputy commissioner, 7th compensation district of the United States Employees Compensation Commission, at U. S. Court Room, Fed-
151 eral courthouse bldg., in the city of Mobile, Alabama, on the 20th day of November, 1928, at 9 o'clock a. m. of that day.

In testimony whereof, the undersigned, a deputy commissioner of the United States Employees' Compensation Commission, has hereunto set his hand at New Orleans, La., this 24th day of October, 1928.

LETUS N. CROWELL,
Deputy Commissioner, 7th Compensation District.

RETURN OF SERVICE

I certify that a duplicate/original of the within notice of hearing was (strike out method not applicable) sent by registered mail to the person named herein on October 24, 1928.

M. I. TOLLEY,
Clerk-Stenographer.

Penalty for private use to avoid payment of postage, $300. Postmark of delivering office and date of delivery: Mobile, Ala., Oct. — 1928, 1.30 p. m.

Post Office Department—official business. Registered article No. 25982. Insured parcel No. —.

152 Return to U. S. Employees' Comp. Com., street and number, or post office box, 307 Cus. Hse. Bl., New Orleans, La.

RETURN RECEIPT

Received from the postmaster the registered or insured article, the original number of which appears on the face of this card.

(Signature of name of addressee):

PILLANS, COWLEY & GRESHAM.

Date of delivery, Oct. 25, 1928. Form 3811.

Postmark of mailing office: New Orleans (Custom House Sta.), La. Registered Oct. 24, 1928.

Receipt for registered article No. 25982. Registered at the post office indicated in postmark. Fee paid, 15 cents. Class postage, —. Return receipt fee, — Spl. del'y fee, —. Delivery restricted to addressee in person or order.

Accepting employee will place his initials in space indicating restricted delivery. Postmaster, per, ———. Return receipt requested, fee paid.

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry fees and indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; Postal Union articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Consult postmaster as to registry fees chargeable on registered international parcel-post packages for

foreign countries. Claims must be filed with postmasters within one year from date of mailing. Form 3806 (Rev. 6-29-27.)

Form US-215.

Leave this space blank.

Case no. 33-1. Insurance. Carrier's No. —.

United States Employees' Compensation Commission, Office of Deputy Commisioner Letus N. Crowell, Administering Longshoremen's and Harbor Workers' Compensation Act

ANSWER OF EMPLOYER OR INSURANCE CARRIER TO EMPLOYEE'S CLAIM FOR COMPENSATION

J. B. KNUDSEN, CLAIMANT

vs.

CHARLES BENSON, BENSON SHEET IRON & METAL WORKS, EMPLOYER

The employer above named for answer to the claim respectfully shows:

154 1. It is admitted that applicant sustained an injury on or about the date set forth in the application.

2. It is denied that both the employer and employee were subject to the longshoremen's and harbor workers' compensation act at the time of the alleged injury.

3. It is denied that the relationship of employer and employee existed at the time of the injury.

4. It is denied that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is admitted that notice of injury was given employer as specified in application.

6. It is denied that applicant was permanently disabled to the extent stated in application.

7. It is admitted that applicant was temporarily disabled for the period stated in application.

8. It is denied that the rate of wages as set forth in application is correct.

9. It is denied that at the time claimant received the injury in question he stood in such relationship to the undersigned as to render the undersigned liable for compensation under the longshoremen's and harbor workers' compensation act.

(Signed) CHAS. BENSON,
Benson Sheet Iron & Metal Works.

NOTE.—The employer or insurance carrier should answer the claim within ten days from the date that a copy of it is served upon him. The original answer should be mailed to the deputy commissioner at the above address and a copy thereof served upon the

claimant either personally or by mailing to the address in the claim.

Received June 11, 1928. District No. 7.
155 Form US–203.
Leave this space blank.
Case No. 93–1. Insurance. Carrier's No. —.

United States Employees' Compensation Commission, office of deputy commissioner administering longshoremen's and harbor workers' compensation act

EMPLOYEES' CLAIM FOR COMPENSATION

(To be filed with the deputy commissioner in accordance with sections 13 and 19 of the law)

Injured person:

1. Name of employee: J. B. Knudsen; employee's check No. —.
2. Address: Street and No.: U. S. marine hospital. City or town: Mobile.
3. Sex, male; age, 55; married, single, widowed—single.
4. Do you speak English? Yes. Nationality, Norwegian.
5. State regular occupation: Rigger, ship construction, diver.
6. What were you doing when injured? Preparing to splice fall.
7. (*a*) Wages or average earnings per day, $5.00 (include overtime, board, rent, and other allowances.) (*b*) Per week, $30.00. (*c*) Were you employed elsewhere during week in which you were injured? No. (*d*) If so, state where and when: ———.
8. Were you paid full wages for day of accident? Nothing.

156 Employer:

9. Employer: Charles Benson, Benson Sheet Iron & Metal Works.
10. Office address: Street and No.: NW. Water & Palmetto. City or town: Mobile.
11. Nature of business: Barge owner, ship repair.

The injury:

12. Place where injury occurred: Derrick barge "Chickasaw," Pinto Island, Mobile Co.
13. Name of foreman: ———.
14. Date of accident or first illness: The 4th day of July, 1927, at about 10 o'clock a. m.
15. How did accident happen or how was occupational disease caused? Was struck and knocked down on barge when tackle, made fast to wharf, let go, upon part of wharf to which tackle was fastened breaking loose.

Nature and extent of injury:

16. State fully nature of injury or occupational disease: Fracture right femur, super condylar with posterior displacement and vertical intra condylar fracture also.

17. On what date did you stop work because of injury? July 4, 1927.

18. Have you retured to work (yes or no)? No. If "yes," on what date? ———, 192—.

19. Does injury keep you from work (yes or no)? Yes.

20. Have you done any work in period of disability? No.

21. Have you received any wages since injury? No. If so, from and to what date? ———.

22. Has injury resulted in amputation? No. If so, describe same:———

157 23. Did you request your employer to provide medical attendance? Don't know. Was completely disabled by injury. Has he done so? No.

24. Attending physician: Name, U. S. marine hospital. Address, Mobile.

25. Hospital: Name——— Address———

Notice:

26. Have you given your employer notice of injury (yes or no)? Yes; by B. Roberts. When? July 4, 1927, and May 29, 1928.

27. If such notice was given, to whom? Charles Benson, Benson Sheet Iron & Metal Wks.

28. Was it given orally or in writing? First notice oral, second in writing.

I hereby present my claim to the deputy commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

(Signed by) J. B. KNUDSEN,
Claimant.

Mail address, U. S. Marine Hospital, Mobile, Ala.
Dated May 29, 1928.
Received: May 31, 1928. District No. 7.
158 Form US–201.
Leave this space blank.
Case No. 93–1. Insurance. Carrier's No. —.

United States Employees' Compensation Commission, office of deputy commissioner administering longshoremen's and harbor workers' compensation act

EMPLOYEE'S NOTICE TO EMPLOYER OF ACCIDENT

To preserve his rights under the law this notice must be filled out and signed by the employee or by someone for him, and delivered or mailed to the employer within 30 days after accident or occupational disease.

1. Employer: Charles Benson, Benson Sheet Iron & Metal Works. Address: Mobile.

2. I hereby give notice, as required by law, that I was injured on July 4, 1927. Monday about 10 a. m.

3. The injury occurred at Pinto Island, barge "Chickasaw."

4. My injury was caused by being struck and knocked down when tackle made fast to wharf let go, upon part of the wharf to which tackle was fastened breaking loose.

5. The nature and extent of my injury is fracture of right femur, supra condylar, with posterior displacement and vertical intra condylar fracture also.

6. I am now at U. S. marine hospital.

7. I am being attended by surgeon in charge, and I here-
159 with request that you provide me with such medical, surgical, or other attendance or treatment, nurse, and hospital service, medicines, crutches, and apparatus as may be required.

8. Employee's check number —.

Date of this notice: May 29, 1928.

(Sign here)

J. B. KNUDSEN.

Address to which mail should be sent: U. S. Marine Hospital.

Received May 31, 1928. District No. 7.

Form US–201.

Leave this space blank.

Case No. 93–1. Insurance. Carrier's No. —.

United States Employees' Compensation Commission, office of deputy commissioner administering longshoremen's and harbor workers' compensation act

EMPLOYEE'S NOTICE TO DEPUTY COMMISSIONER OF ACCIDENT

To preserve his rights under the law, this notice must be filled out and signed by the employee or by someone for him, and delivered or mailed to the deputy commissioner, United States Employees Compensation Commission, at the above address within 30 days after accident or occupational disease.

1. Full name of injured person: J. B. Knudsen. Employee's check No. —.

160 2. Address: U. S. Marine Hospital, Mobile, Alabama.

3. Name of employer: Charles Benson, Benson Sheet Iron & Metal Works.

4. Address: N. W. Water and Palmetto Streets, Mobile, Alabama.

5. Time of accident or first illness: July 4, 1927, Monday about 10 a. m.

6. Time of stopping work: Immediately upon being hurt.

7. Place where accident or injury occurred: Derrick barge "Chickasaw," Pinto Island, Mobile Co.

6. How did accident happen or how was occupational disease caused (describe fully)? Was struck and knocked down on barge when tackle, made fast to wharf, let go, upon part of the wharf to which tackle was fastened breaking loose.

9. Nature and extent of injury or disease: Fracture of right femur, supra condylar, with posterior displacement and vertical intracondylar fracture also.

10. Names and addresses of witnesses to accident or condition causing occupational disease: Capt. B. Roberts, 308 State Street, Mobile; Joel Lemmis, c/o tug "Sister," Mobile.

11. Did the employer or his superintendent or foreman have knowledge of the accident or occupational disease? Yes.

12. Name of such person: Notice given immediately to Chas. Benson by Capt. B. Roberts.

13. Did you request your employer to furnish medical service? Am unable to say because completely disabled by injury. Has he done so? No.

14. Name of attending physician: Surgeon in charge U. S. Marine Hospital. Address: Mobile. Date of this notice: May 29, 1918.

(Sign here) J. B. KRUDSEN.

Received May 31, 1918. District No. 7.

161 United States Employees' Compensation Commission, Before Hon. Lotus N. Crowell, Deputy Commissioner, 7th Compensation District.

J. B. KRUDSEN, CLAIMANT

vs.

CHARLES BENSON, BENSON SHEET IRON AND METAL WORKS, DEFENDANT

Case No. 92-1.

Transcript of testimony at hearing.

Pursuant to notice, this matter was heard before Lotus N. Crowell, deputy commissioner, United States Employees' Compensation Commission, at Mobile, Alabama, on the 22nd day of November, 1918.

APPEARANCE OF COUNSEL

Hon. Alexis T. Gresham and Hon. Palmer Pillans, Messrs. Pillans, Cowley and Gresham, attorneys for the claimant.

Hon. Vincent F. Kilborn, Messrs. Outlaw, Kilborn, and Smith, attorneys for the defendant.

11/26/18. Copy mailed to the Commission. L. N. C.

STIPULATION AS CERTAIN FACTS

It is hereby stipulated and agreed by and between the parties hereto, as follows:

First. That J. B. Knudsen, claimant, sustained injury on July the 4th, 1927.

Second. That Charles Benson, Benson Sheet Iron and Metal Works, had notice and knowledge of said injury as provided by the longshoremen and harbor workers' compensation act.

Mr. Gresham. In regard to Mr. Knudsen's injury, I have a certified copy of the record of the marine hospital at Mobile and I understand, under the practice, that is sufficient, and I did not make any arrangement to bring the physician of the marine hospital down here.

Note.—Mr. Gresham produced the certified copy of the record referred to.

Mr. Kilborn. We object to the introduction of the record as not being the best evidence, and as irrelevant, incompetent, and immaterial.

The Deputy Commissioner. The practice is here, that we allow medical reports to be put in evidence, but of course, you can not deprive the party of his right of cross-examination of any witness.

Mr. Kilborn. That report there would deny to us the right to cross-examination of the witness, and that is one of the theories upon which we object.

The Deputy Commissioner. In your answer here, it was admitted that the applicant was temporarily disabled for the period stated.

Mr. Kilborn. But, the extent of his disability and how long it would continue, we do not know.

Mr. Gresham. I would like you to examine this certified copy. It simply describes, from a medical standpoint, just what injury the claimant suffered, and gives the opinion of the surgeon in charge of the United States Public Health Service at Mobile, of the nature of the permanent disability. It is a certified copy of the record
168 of a governmental department of the United States, and I think is admissible as a certified copy of the record. Certainly, it is admissible in a proceeding of this kind, where the statute provides that the commissioner is not bound by the technical rules of the common law, and they are privileged to go outside the usual channel.

Mr. Kilborn. I should like to object.

The Deputy Commissioner. The objection is overruled, with the provision that the doctor is to be produced here, for the purpose of cross-examination. Is that the ground of your objection?

Mr. Kilborn. Yes, sir.

The Deputy Commissioner. Received in evidence, certified copy of the record of the hospital, over the objection of the defendant, and marked "Claimant's Exhibit 1," with the proviso, however, that the doctor is to be produced for cross-examination.

Mr. GRESHAM. May I ask your honor that a subpoena issue. It is very difficult to get the information at the marine hospital and I have no objection to producing the doctor, but the only trouble is the delay of getting him.

Mr. KILBORN. The chief basis of our contention here, is the absence of any liability, whatever, and we might defer any examination of the doctor until we get the testimony in as to whether there is any liability. Of course, if there is none the court would not want to hear the doctor, and if, when you get through, you are not ready to decide the case offhanded, we will be glad to go out and get the doctor's testimony.

The DEPUTY COMMISSIONER. All right, we will hold that matter in abeyance, and you can put on your other evidence.

Captain BEAUREGARD ROBERTS, a witness called by Mr. Gresham, after having been first duly sworn by the deputy commissioner, testified as follows:

164 The DEPUTY COMMISSIONER:

Q. State your name.

A. Beauregard Roberts.

Q. What is your address?

A. 303 State Street.

Q. Mobile, Alabama?

A. Yes, sir.

Examination by Mr. GRESHAM:

Q. What is your business?

A. I am in the tugboat business and towboat.

Q. You are a navigator in the harbors and rivers around Mobile?

A. Yes, sir.

Q. Do you know Captain Joe Knudsen, the claimant in this case, and Mr. Charles Benson, of the Benson Sheet Iron and Metal Works?

A. Yes, sir.

Q. You have known them for several years?

A. Yes, sir.

Q. Were you present at the time of Captain Knudsen's injury at Mobile, on July the 4th, 1927?

A. Yes, sir.

Q. Where did this injury take place?

A. Over at the Alabama Dry Docks.

Q. Where was Captain Knudsen when he was hurt?

A. He was on the derrick "Chickasaw."

Q. The derrick barge?

A. Yes, sir.

Q. Who owned the derrick barge "Chickasaw" at that time?

A. Mr. Benson.

Q. Mr. Charles Benson, of the Benson Sheet Iron and Metal Works?

A. Yes, sir.

Q. State to the court what you know of the circumstances, with reference to Captain Knudsen being on the barge at the time.

165 A. Well, I had towed the barge for Mr. Benson from Chickasaw down to the Southern docks and made her fast, and I went from there up the river and when I came back my wife said, "Mr. Benson wants to talk to you over the phone," and I rang him up and he told me that Captain Joe had cut the wire on his derrick and promised to splice it and he had a call for the derrick from the State docks and had her rented, but the wire was cut and he could not use it and he wanted to know where Joe was, and I asked my wife where Joe was and she said he had gone to Pascagoula and that he would be back the next day, and in that event, she wanted to go to Biloxi, sickness down there, and I wrote a note and put it on Joe's desk and I told her to tell him to come back here right away, Captain Benson wanted his cable spliced; he cut it and promised to splice it and I said, "I am going to Biloxi with my wife and I will be back here," and I think they wanted to have the derrick about the 5th of July—the Fourth was a holiday and they had to use her the next day. And I went to Biloxi and came back that night and he came up during the night but I didn't see him that night, and I got up the next morning and we got some breakfast and went down to the boat and he had some tools that he had left on my tug, and he said he wanted to get them and I asked him where they were and he told me and I said I will get them and you come on down and go to the boat and get things ready to splice the cable, and I said, I will lend a hand and I will get Mr. Floyd Lennis; and he went on across and I went to my boat and got the tools and Mr. Floyd, and we came and went over to where the derrick was, over at the Alabama docks and Captain Knudsen was there and said he wanted to swing the boom around to get it over the docks, so that he could splice it, and he picked up a line and made it fast from the bow of the derrick over onto a stringer that was on the wharf, and I made the remark at the time, that the stringer didn't look good to me, that he had better tie it to the piling and he said, "I will attend to this; you go

166 back to the stern and slack away, so I can heave her around"; and time I got back there, I heard somebody holler and his head was down on the deck and the line was turned around his leg and his leg was up in the air, and I got the man to slack down the block and that loosened the rope and took him off and got him in a boat and carried him over to this side and I rang up Mr. Benson and told him that Joe had been hurt and had his leg broke and I was going to try to get him in the hospital—that he had worked on my boat prior to that time and that he was entitled to go to the marine hospital, I thought, and I rang them up and they sent down a bus right away and they carried him out to the hospital.

Q. When was it you brought that barge down to Chickasaw?

A. Well, it must have been a day or day before that, because I had gone up the river, but I don't exactly remember the date; some-

where about the first of the month, or in that neighborhood; first of July.

Q. Did you move that barge, except to bring her down?

A. No, sir; I brought her down to the Southern dry docks and then I left her.

Q. Didn't you take her down to the Mobile and Gulf Navigation Company?

A. I did later on. When I came back, the boat was over at Henderson's docks.

Q. At Henderson's docks?

A. Not Henderson's docks; Harrison's docks.

Q. Do you know what she was doing at Harrison's docks?

A. I understood she was taking off a boat that was burned and had fell on the dock and they were raising her up with the derrick and taking her off.

Q. Who was on the barge over at Harrison's docks?

A. I think Captain Joe was on there, and I don't know who else was on her. I didn't go over there at all.

Q. How long was it, from the time you saw her over at Har-
167 rison's docks to the time you and Captain Knudsen went over to the derrick barge at the Alabama dry docks?

A. How long?

Q. Yes. What was the period of time?

A. Well, if I remember right, I don't think it was more than two or three days, or something of that kind.

Q. Now, when you brought her down from Chickasaw, where did you leave her?

A. I put her at the Southern docks.

Q. And the next time you saw her?

A. The next time I saw her she was at Harrison's docks.

Q. And the next time you saw her, where was she?

A. The next time I saw her she was back in the slip again, at the Southern docks.

Q. How did she get back in there do you know?

A. I don't know.

Q. And the next time you saw her, where was she?

A. The next time I saw her she was there, and I don't remember now where she went after that, but she must have moved away from there and come back there again into the Southern docks.

Q. Do you know what work was done with that derrick barge from the time you brought her from Chickasaw until you went with Captain Knudsen when he was hurt?

A. No more than I have stated here, that I was familiar with her moving about from one place to the other.

Q. Do you know whether she was doing any work?

A. Well, before he spliced that cable, he was in the slip at the Southern docks raising a small derrick of mine that was sunk there, that I had loaned him.

Mr. KILBORN. Loaned who?

168 A. Captain Knudsen. I don't know whether he loaned it to him or how he got it, but he had it there trying to raise this machine.

Examination continued by Mr. GRESHAM:

Q. How long had the derrick barge been at the Alabama before Captain Knudsen was hurt?

A. I don't know, sir.

Q. The place where the derrick barge was, at the time of Captain Knudsen's injury, was alongside the wharf at the plant of the Alabama Dry Dock and Shipbuilding Company?

A. Yes, sir.

Q. The barge was in the water?

A. Yes, sir.

Q. The navigable waters?

A. Yes, sir.

Q. Of Mobile River?

A. Yes, sir.

Q. Explain to his honor, as clearly as you can, just how that derrick barge was made; the construction of it; what it is and how it is rigged?

A. Well, she is just a square scow; a square barge, decked over and made very strong and very heavy for lifting purposes. She has got a very long boom on her and boilers and engine, and she has been used at times for dredging. They used her up at Chickasaw, during the war, for dredging. She had a dredge bucket.

Q. Has she a mast on her?

A. She hasn't got a mast. She has an A frame for hoisting this boom up and down. There is a short mast that works in a pivot in that A frame.

Q. How is the boom rigged?

A. The boom is rigged with wires and sheaves and blocks connecting to steam engines on the deck of the barge.

Q. Can you explain just how the boom is held in place and just how it is used?

169 A. This short mast is rigged on a turn table and that leads with wires to springers to swing the boom. The boom, itself, lifting the load, the wires go up and into blocks on the boom and into the sheaves that come down and lead to engines on the deck.

Q. How are the wire ropes used for lifting purposes, reaved?

A. They are rove through those sheaves and heavy blocks.

Q. How many blocks are there used for the purpose of lifting?

A. Well, on the main boom, I think there are either four or six sheave blocks; very large blocks, twenty-two or twenty-four inches in diameter.

Q. How many blocks?

A. Two of those on that boom and then there are sheaves leading from that down to the drum of the engine.

Q. What do you mean by sheaves?

A. Well, if you went to lead it over that way you would have a block from that so that a wire could go through that and come down to the drums on the engine.

Q. Do you think you could take this model here, and show his honor the position of the A frame and the boom and just how the wires lead down the boom and to the engine, and just the position of the blocks—could you take these pens and this model, here?

A. (The witness indicating and demonstrating with a model.) This would be the A frame of the boat. This is a short mast that comes in here between. That mast sets on this turn-table here and that revolves. This main boom then, is out here in this position, coming down on this drum. From other blocks hung down to pick up the load from the boat, and this lifts up through this block on the short mast and comes down there.

Q. Is this the lift?

A. Yes, sir; one is a topping lift and the other is a swinging boom down here, the loading lift.

170 Q. There are two separate and distinct appliances?

A. Yes, sir. One of those to hold the boom stationary for while you are lifting your load, and the other is to work on this block here, with the sheaves, into this mast.

Q. We are talking about the lifting.

A. Well, the lifting comes down through and comes to this mast and runs down this mast and down to the drums on the engine. That is the lifting purchase.

Q. Is this point here, on the boom, known as the head of the boom here?

A. Yes, sir.

Q. And this is the heel of the boom?

A. Yes, sir.

Q. The heel of the boom is at the mast?

A. Yes, sir; the heel of the drum is on the bull-wheel.

Q. Now, that portion of those wires which lifts in the load, is that known as the fall?

A. Yes, sir; that is a fall.

Q. And that portion of the wire which holds the boom up is known as the topping lift?

A. Yes, sir.

Q. This fall—how many blocks were used?

A. There was a block at the head of the boom for this special fall, and another one hangs down here—large blocks.

Q. Then the wire comes over the top of the boom to the engine?

A. Yes, sir. Comes down to the engine.

Q. This boom, is it longer than the barge?

A. Oh, yes.

Q. A good deal longer than the barge?

A. Yes, sir. Of course, if they want to bring the load up close, they top this boom up higher and high enough to raise it up clear

of the barge and that boom swings in any position they want it to lift the load.

Q. How much longer is it than the barge?

171 A. I think her boom is probably eighty feet long.

Q. Eighty feet long?

A. Yes, sir.

Q. About how long is that barge?

A. I think the barge is probably seventy-five feet or somewhere in that neighborhood.

Q. The A frame is somewhere in the middle?

A. I think it is nearer the bow than the stern, but near the middle.

Q. Does the boom swing out from the bow?

A. Yes, sir; it swings out over the bow.

Q. Do you know the size of the blocks on that barge?

A. No; I think they are somewhere about or twenty-four inch blocks.

Q. Do you know how many sheaves?

A. Either four or six.

Q. Do I understand you to testify that Captain Knudsen was on the barge when it was brought down to Chickasaw?

A. Yes, sir.

Q. And that he was on the barge at the time it was over at Harrison Brothers?

A. Yes, sir; I suppose he was on there. I don't know who was on there at Harrison's. The barge was over there, but I didn't go over there, but I understood that he was on there.

Mr. KILBORN. We move to exclude his statement that he was on there, because it is apparent from his testimony that it is hearsay.

The DEPUTY COMMISSIONER. The motion is granted, as to his stating that he was on her at Harrison Brothers.

Mr. PILLANS. That is, just the statement that he was on her at Harrison Brothers, but not as to the rest of his answers.

DEPUTY COMMISSIONER. Yes, sir.

172 Examination continued by Mr. GRESHAM:

Q. Did I understand you to testify that at any time you shifted that barge to the Alabama dry dock after you brought her down, that you put her over there?

A. Yes; I shifted her over there, but I don't exactly remember when I shifted her there. When I carried her back from the Southern dock I am pretty certain I carried her down to the Gulf Navigation Company to pick up some boilers.

Q. Who was on her at that time?

A. Captain Joe and the engineer.

Q. Captain Joe Knudsen?

A. Yes, sir.

Q. Do you know who those boilers were picked up for?

A. No. They belonged to the Gulf Navigation Company. I don't know who they were picked up for. He got orders to take her down there, that they had some boilers to move.

Q. Captain Joe got the orders?

A. Yes, sir. He said Mr. Benson wanted her down there and gave me orders, and I got her down there, and it was getting night.

Q. Do you know whether any repair work was done on that barge at the Alabama?

A. They were doing work on her. I don't know what all work they did, but they were doing quite a lot of work on her there.

Q. You are not a rigger by trade?

A. No, sir; I am not a rigger.

Examination by Mr. KILBORN:

Q. Captain Roberts, you and Mr. Knudsen and Captain Charlie Benson here have all been good friends a good many years?

A. Yes, sir; ever since I have been in Mobile.

173 Q. Did Mr. Knudsen, at any time prior to the time that he was hurt, get a job to do any work on the Steamship "Apollo," on the other side of the river?

A. Yes, sir; he had a job with the owners of the "Apollo" to take up the hull that was sunk there in the slip. He had been taking some of the machinery off her.

Q. Mr. Knudsen had that contract?

A. Yes, sir.

Q. Mr. Benson had nothing to do with that?

A. No, sir; not that I know of.

Q. Did you have anything to do with that?

A. No, sir; not that contract.

Q. It was Knudsen's contract with the owners of the "Apollo"?

A. Yes, sir.

Q. Where was the "Apollo"?

A. She was in the Southern slip.

Q. At the Southern dry dock, up in the slip?

A. Yes, sir.

Q. Now, did Mr. Knudsen make any arrangement with you for the use of your own derrick barge in the "Apollo" job, over at the Southern dry dock slip?

A. Yes, sir; I just loaned him the boat. He asked me to loan it to him.

Q. Did you loan it to him without any compensation?

A. Yes, sir.

Q. Just as a good friend; an act of friendship?

A. Yes, sir.

Q. While he had your derrick barge over there, under that friendly borrowing, did your barge sink?

A. Yes, sir.

Q. While in his charge?

A. Yes, sir.

Q. Did you ask him to get it raised?

A. I asked him what he was going to do about it and he said he was going to get it raised as soon as he could, and he was, at that time, working for Mr. Benson up at Chickasaw.

174 Q. And got off temporarily to take this job of his own, on the "Apollo"?

A. No, sir; he didn't get off. He finished the boat and got out, and I brought the boat down for Mr. Benson, and put her over at the Southern docks.

Q. Put what over there?

A. This State derrick dredge.

Q. Who was Knudsen working for when he took this "Apollo" job?

A. He was working for himself. He wasn't working for anybody else.

Q. Had he been working for Mr. Benson on this barge he had gotten hurt on?

A. Yes, sir.

Q. Previous to that time, he had been working for Mr. Benson, on this dredge; anyhow he took this "Apollo" job for himself?

A. Yes, sir.

Q. And he borrowed your boat to do it with?

A. Yes, sir.

Q. Your boat sunk?

A. Yes, sir.

Q. Then, do you know whether he borrowed Mr. Benson's derrick barge?

A. What?

Q. Do you know whether Mr. Knudsen borrowed Mr. Benson's barge to raise yours?

A. I don't know how he came with Mr. Benson's barge. All I know is, he was digging out the barge for Mr. Benson. He had quit the "Apollo" and gone up there to work for Mr. Benson, and left my derrick in the slip, and while he was up there working for Mr. Benson, my derrick sunk in the Southern slip.

Q. While he was up there working for Mr. Benson, your derrick sunk in the slip?

A. Yes, sir.

Q. Then, what happened?

A. I left it there and went up the river, and when I came back the derrick was away over there and down at Harrison's yard.

175 Q. Do you know whether or not Captain Knudsen borrowed Mr. Benson's dredge in order to raise yours?

A. I don't know whether he borrowed it or rented it or how he got it, but he was working on the derrick at the time.

Q. On Benson's derrick?

A. Yes, sir.

Q. Do you know whether he used Benson's derrick in order to raise yours?

A. Yes; he did.

Q. Do you remember on one occasion that Mr. Benson telephoned to you to get Joe and meet Benson with Joe, in the Bienville Square here, about Knudsen's borrowing Benson's derrick?

A. Well, I don't exactly know whether he wanted to borrow it or whether he rented it, or how he got it, but he rang up and wanted to know where Joe was. Joe was living with me.

Q. Did you meet Mr. Benson in the square, along with Joe Knudsen, about using Benson's dredge to raise yours?

A. Possibly I did.

Q. Do you remember?

A. I don't remember of any question about my having anything to do with Captain Joe getting the derrick.

Q. You don't remember the conversation in the square?

A. No; I asked Captain Joe, "What are you going to do about raising my derrick," and he said he was going to get Benson's derrick to raise my derrick up with.

Q. Then what happened after he told you that?

A. He finally got the derrick and carried her over there, or how she got back there, I don't know. She had gone to Harrison's and I went up the river and when I came back she was back in the slip again.

Q. Did he raise your derrick?

A. Yes, sir; he raised mine.

176 Q. Joe Knudsen did?

A. Yes, sir.

Q. Do you know whether the cable was cut on Mr. Benson's derrick?

A. I didn't know anything about the cable being cut and didn't know until I came back home and talked with Mr. Benson, and he wanted to know where Joe was. I had gone up the river again. When I took that derrick, after he raised my derrick, I carried that derrick back to the Gulf Navigation Company to lift some boilers. I left her there and went back up the river again. I worked for the mill company, and when I came back the boat was over at the Alabama dry dock.

Q. That is Mr. Benson's boat?

A. Yes, sir.

Q. What conversation did you have with Mr. Benson in regard to Knudsen having cut the cable on Mr. Benson's dredge boat?

A. I talked to Mr. Benson over the phone, and he told me Joe had cut his cable, and he had a chance to rent his boat and he could not do nothing with it because the cable was cut, and I told him my wife said he had gone to Pascagoula.

Q. Did he say anything to you about expecting you and Joe to splice it?

A. He did not. He said that Captain Joe had promised to splice it.
Q. Did he say anything about paying Captain Joe for splicing it?
A. No, sir.
Q. You then communicated with Knudsen and told him that Mr. Benson was expecting him to splice this cable that he had cut?
A. I did.
Q. And the next day Knudsen came by your house?
A. Yes, sir; came up that night, and I took him, the next morning, and he went over there, and I followed him over with the other man, to splice the cable.
177 Q. At the time Mr. Knudsen got hurt, was Mr. Benson over there?
A. No, sir; he wasn't there, when he got hurt.
Q. You took a man named Floyd Lennis to assist Knudsen in splicing the cable, didn't you?
A. Yes, sir.
Q. Who was Lennis working for?
A. For me.
Q. And, was being paid by you?
A. Yes, sir.
Q. What were you doing over there assisting him?
A. I went over to help Captain Joe to do what I could to get the cable spliced.
Q. Were you charging Mr. Benson for the service?
A. No, sir.
Q. Or Mr. Knudsen's services?
A. No, sir. Lennis was staying on my boat.
Q. You took your man Lennis and yourself over there to assist Knudsen in this splicing operation?
A. Yes, sir.
Q. Do you know, of your own knowledge, whether Mr. Knudsen had made any arrangement with Mr. Benson for that operation of splicing?
A. No; I don't know anything about it.
Q. When you got over there, did you see Mr. Jerry Woolsey over there on Mr. Benson's barge?
A. I don't know. There was an engineer there. I suppose he was an engineer. He was at the engine when I was there.
Q. Who directed what was to be done in this swinging of the barge around?
A. Captain Joe Knudsen.
Q. Mr. Joe Knudsen, the claimant?
A. Yes, sir.
Q. And I understand, the only person on that barge at the time that Knudsen was hurt that was working for Benson was the engineer, was it?

Mr. GRESHAM. We object to that, because that was not
178 what the witness testified to. He testified that Mr. Benson telephoned the witness, asking for Joe Knudsen to splice that

cable, and that there was nothing said about compensation; that the witness went over there with Lennis and when he got over there there was an engineer over there.

Mr. KILBORN. All right, I withdraw the question.

Q. How did it happen that you and your man was over there; under what arrangements?

A. Nothing more than to see that the cable was spliced for Mr. Benson, both being friends of mine, I went to assist them. Mr. Benson said it depended on the splicing of that cable; they would not take the barge unless she was rove up.

Q. Hadn't Mr. Knudsen told you that Charlie Benson, the defendant in this case, had loaned him this barge to assist in raising yours, and wasn't that the reason why you and your man were over there assisting?

A. Yes; he did tell me that Mr. Benson had loaned him the derrick to raise my barge.

Q. And that is the reason why you and your man Lennis, went over to help Knudsen in the splicing operation?

A. Yes, sir; I suppose it was. I had loaned him my barge and it had got sunk, and so far as Mr. Benson was concerned, I had been working for Mr. Benson and I thought I would be a mighty poor sort if I could not help him out.

Q. You were all friends at the time?

A. Yes, sir.

Q. When Joe did work on this derrick barge of Mr. Benson's, prior to the time he was hurt, he was working on there as a member of the crew?

A. On the derrick; yes, sir. He was working on the derrick up there when he dug her out up there at Chickasaw.

Q. He was a member of the crew at Chickasaw?

A. Yes, sir; he seemed to be a kind of foreman on there. They worked under his orders.

179 Examination by the DEPUTY COMMISSIONER:

Q. What do you understand, "as a member of the crew"?

A. "As a member of the crew," he was the man that gave orders on the boat. He was working on the boat. He was using her and moving her about and they worked under his orders while he was handling the derrick.

Examination continued by Mr. KILBORN:

Q. What work was the derrick doing prior to the time that Knudsen was hurt and when Knudsen was on it?

A. I have already stated what I know she was doing. The last thing I knew she was to move those boilers down there for the Mobile and Gulf Navigation Company and put them in the water, and I put her down there and left her.

Q. Was Knudsen on her then?

A. Yes, sir; he was.

Q. How many days was that before he was hurt?

A. I possibly think, four or five days. It might have been a little longer and it might have been not quite so long. I had gone back up the river.

Q. Don't you know that it was about June the 11th, the last time that Knudsen worked on this barge, before he was hurt?

A. Now, I don't think it was that long, but I don't know. I won't say positively, because I don't remember exactly about the time. She was over there at the Alabama Docks. I seen her laying over there some time, but whether he was on her then, I don't know. I was coming and going up the river all the time.

Q. The last time you do know that Knudsen was on her, was when she was down at the Mobile and Gulf Navigation Company.

180 A. That is when I left him on her; yes, sir.

Examination by Mr. GRESHAM:

Q. That engineer who was on that derrick barge the morning that Captain Knudsen was hurt, did you pay him for being over there, the man who was operating the engine on the derrick barge?

A. No, sir.

Q. Who was he employed by?

A. I don't know anything at all about him, any more than he was on there.

Q. Did Captain Knudsen have anything to do with bringing him over there?

A. I don't know. He was on the barge when I got there.

Q. But you don't know how he got there?

A. No, sir.

Q. You didn't pay him?

A. No, sir.

Q. And didn't bring him over there?

A. No, sir.

Q. Didn't have anything to do with bringing him over there?

A. Not a thing.

Q. Did I understand you to testify that Mr. Benson told you he had to have those blocks rove up in order to get that barge ready for this other job?

A. Yes, sir.

Q. Do you know what Captain Knudsen's business or trade has been?

A. He is a rigger, a ship rigger.

Q. Do you know how much experience he has had as a ship rigger?

A. Quite a bit of it. He was boss rigger out at Chickasaw during the war, as boss rigger, and he was under me as foreman of a gang.

Q. How many years experience has he had as a rigger.

181 A. I found him out there, and he was out there eight or ten months while I was there. He was under me.

Q. How long ago has that been?

A. That was during the war.

Q. Eight or ten years?
A. Yes, sir.
Q. Has he had experience around the harbor during that time, too?
A. Yes, sir; he is a diver and a rigger.
Q. You took Captain Knudsen to the hospital at Mobile?
A. Yes, sir.
Q. Did he seem to be hurt?
A. Yes, sir.
Q. Hurt very badly?
A. Yes, sir.
Q. Seem to be suffering?
A. Yes, sir.
Q. Suffering a good deal?
A. Yes, sir.
Q. Where is Captain Knudsen staying at this time?
A. He is in the hospital.
Q. He has been disabled from that injury from that day until this day?
A. He is in the hospital yet.

The DEPUTY COMMISSIONER:

Q. Isn't that Captain Knudsen that is sitting behind you?

Mr. GRESHAM. Yes, sir; I was simply stating that Captain Knudsen was taken to the hospital and has been there ever since.

Examination by Mr. GRESHAM:

Q. So there were some weeks between the time you brought the derrick barge down from Chickasaw, until Captain Knudsen was hurt?

182 A. There was some time in there. I don't know how long it was. I know she was over at the Alabama and they were doing some work on her, but what work they were doing, I don't know.

Q. That derrick barge of yours, what would it weigh, the one that was sunk?
A. Do you mean her dead weight?
Q. No.
A. Her lifting up weight?
Q. Yes.
A. Seventy-five or a hundred tons, with the mud and water she had in her; somewhere in that neighborhood.
Q. Can you tell us the diameter of that drum on that winch on the barge "Chicksaw"?
A. No, sir; I do not know the diameter. I suppose, in the neighborhood of three feet, or maybe two and a half or something like that.

Mr. KILBORN. You had loaned your barge to Knudsen without any compensation or agreement about compensation or thought of compensation, hadn't you?

Examination by the DEPUTY COMMISSIONER:

Q. Did you see Knudsen get hurt?

A. Yes, sir.

Q. How did he get hurt?

A. He was standing forward when I left him to go back aft and slack her away, and he was going to pull her head around with the steam winch, and he had a line fastened in a block there, which led down to the wharf. He was going ahead on that engine to pull that wire up, so as to swing her around into the slip and that line fastened to a piece of timber on the wharf and that piece of timber pulled off and came up the side bits on the side of the barge
183 and the end of it got caught that bit and the bight of it got around his leg and he must have stepped over it or fell over it, or something—I didn't see it exactly at the moment, but when I saw him his head was on the barge and his foot was up in the air when I ran and slacked it up and took him off and he was hurt.

Q. Was he rendered unconscious?

A. No, sir; he wasn't unconscious, but his leg was broken here and in the kneecap.

Q. What statement did he say to you immediately after he got hurt?

A. He said his leg was broke. His leg was broke and he was in great pain and suffering a great deal.

Q. He didn't say anything further in regard to the nature of his connections with Benson?

A. No, sir; he didn't say anything in regard to that at all.

Examination by Mr. KILBORN:

Q. The trouble happened when the timber gave way that he fastened the line to?

A. The line was fast to this stringer on the wharf and it gave way.

Q. Who had fastened it to that timber?

A. I guess he did himself.

Q. He was directing the whole operation?

A. Yes, sir.

Examination by Mr. GRESHAM:

Q. Why was it necessary to swing the barge around?

A. So that this boom would lay down on the wharf. The barge was laying like this, and he took a line here and made it fast out here and it led up to that block up there, and then down to the engine, and he wanted to swing this barge around so as to lay this boom down on the wharf so he could uncouple it and splice it and put it in.

184 Q. Was there a block hanging right here where my pencil point is?

A. Yes, sir; on the end of the boom, and there was another block up here.

Q. That was the block that Mr. Benson wanted rove up?

A. Yes, sir; those were the blocks.

(Thereupon this witness was excused.)

Captain JOE KNUDSEN, called as a witness by Mr. Gresham, after having been first duly sworn by the deputy commissioner, testified as follows:

Examination by the DEPUTY COMMISSIONER:

Q. State your name, please.
A. J. B. Knudsen.
Q. You are claimant in this case?
A. Yes, sir.
Q. What is your address?
A. At the present time the marine hospital.
Q. You came from the marine hospital this morning?
A. Yes, sir.
Q. And when this case is over you are going back there?
A. Yes, sir.
Q. When were you born?
A. In 1869.
Q. Have you done any work since you got hurt?
A. No, sir.
Q. Any doctor that has been treating you tell you that you were able to return to work?
A. No, sir; they are treating me, but they say that it is a chronic injury and I will never be able to do any work.
185 Q. Still treating you at the marine hospital?
A. Yes, sir; they are treating me.

Examination by Mr. GRESHAM:

Q. Captain, it is your right leg that was injured?
A. Yes, sir; that knee.
Q. Is it any shorter than the left leg?
A. Yes, sir; it is about two or three inches shorter.
Q. Before you were hurt, was anything the matter with that right leg?
A. No, sir.
Q. And your right leg is about three inches shorter by reason of the injury?
A. Yes, sir.
Q. What has been your trade?
A. Well, rigging and working on the water and dredging and construction work of all kinds and different kinds.
Q. How many years' experience have you had as a rigger?
A. I have been doing it off and on for possibly twenty-five or thirty years, I should say, on different jobs here and there.
Q. Tell his honor just how you were hurt and what you were doing.
A. Well, when I got back from the "Warrior Service" people, Mr. Benson asked me to go to Chickasaw and help to get that derrick up, so I went up there and we worked under Mr. Benson's orders—the engineer and I—and we had some boys there also, and

when we got the derrick out, and during the time I was up there, a heavy norther came up and this derrick of Captain Roberts' was tied up at the Southern docks. As the river went down it got on the wharf and turned over and sunk into the slip, and I went down that morning and Captain Beaury Roberts came up and asked me if I had time to go down that morning, and I went down and saw it sunk, and I could not do anything that morning, and I went
186 back to Chickasaw to get that derrick out at Chickasaw for Mr. Benson. Eventually we got it out of there. Well, we suggested to go to the Southern docks, because I had a permit to leave Benson's derrick there, because I was working there a good deal, and we had a little junk on that "Chickasaw" derrick that would be in the way, and we put it on the wharf.

Q. Who do you mean by "we"?

A. All of us. You know we were going to the Southern docks and have that derrick there, because I had to reave up the fall Mr. Benson got. Mr. Benson brought a big reel of wire on board and he wanted that hoisting fall rigged up and by going there I could lay my boat on the wharf and go to work and reave that fall up, so we thought that would be the best place to go.

Q. Who do you mean by "we"?

A. All of us; the engineer.

Q. Was Mr. Benson in that "we"?

A. Yes; he knew I was going there.

Q. Did he know you were going there?

A. Sure.

Q. So, who you mean, "we decided," that was me and Mr. Benson?

A. Me and the engineer there; we decided to go down there and have that fall reve up, you see, so Benson said he wanted that fall reve up. He made us understand before we left Chickasaw that he wanted the new fall on there. Mr. Benson had us to understand that. He said the old wire that was on there was not safe, and that is why he wanted the new wire on there.

Q. What was the condition of that old wire?

A. It was bad. It was not trustworthy. You could not depend on it. It was an old wire, three-quarter wire, that had been there for years and years and you could not depend on it, and it was rusty and decayed in places.

Q. Now, at that time, who was paying you?

A. Charlie Benson.

187 Q. How much was he paying you?

A. I got $5 a day for every day I worked. Five dollars a day. So I layed the boom down on the wharf to reave up the new wire, so now we had two four sheave blocks.

Q. Explain what you mean by the sheaves in the blocks.

A. The sheave is a round concern which the wire lays in in the block.

Q. Is it a wheel?
A. Yes, sir.
Q. There were four of these wheels in that block?
A. Yes, sir; four of those wheels.
Q. That block was shaped in a kind of U?
A. It is kind of oblong.
Q. And there are wheels in that block?
A. Yes, sir; in the block.
Q. And the wheels are supported by a kind of bolt that runs through there?
A. Yes, sir; through the center.
Q. Through the block and through the wheels?
A. Yes, sir.
Q. And there were four of those wheels or sheaves in those blocks?
A. In those blocks; yes, sir.
Q. Now, explain to his honor where those blocks were?
A. One block was under the end of the boom here, and the other block was hanging down like that, from the boom. Now, I spliced that wire and we had to turn this barge around like that, on the wharf, so I could lay that boom on the wharf and unloosen that wire up there, and get hold of the end and splice more wire to it.
Q. You started talking about when you first put that new wire on there,—explain how you put it on that time.
A. Well, I laid this on the wharf.
Q. Laid what?
188 A. This boom, here; laid it down, something like that, on the wharf, low enough for me to stand on the wharf to reach that block there, and took that old wire out, unloosened that nut and took the old wire out that was there, and when we got that old wire out we took the new wire from the barge and rove it in there in these blocks, and then, when I had it rove in there and fastened up, then I topped this boom up like that.
Q. How much wire did you put in there?
A. Around about seven hundred feet.
Q. Do you know how much wire was on that drum?
A. Yes, sir—I don't know exactly how much it was.
Q. I mean, on the reel.
A. I could not say. We took a whole lot of wire off there and put a new topping lift on there and took, probably, about ten or eleven hundred feet for the topping lift. We did that at Chickasaw under Mr. Benson's orders.
Q. Who owned this new wire that you put in there?
A. Mr. Benson brought that wire up there for me to put in there.
Q. Well, now, after you got that new wire on that fall, what have you to say as to whether that was properly done or not?
A. Well, to my estimation, it was properly done.
Q. Why, explain it.
A. Because I rove up three of those wheels in there.
Q. How many parts does that make?

A. That would make seven parts, and there is one part that comes in there that I fastened to the bottom block, which will make the seventh part.

Q. What is the size of that wire?

A. Seven-eighths.

Q. Steel cable?

A. Yes, sir; seven-eighths rule in diameter.

189 Q. How much would the boom, so rigged, raise—what weight?

A. Thirty-five to forty tons, I presume.

Q. What is the capacity of that derrick barge?

A. Well, that is what I meant? The barge will stand up. The steel boom, itself, will hold about thirty-five or forty tons.

Q. How much would that wire, as you rigged it, hold?

A. That will hold over one hundred tons, or more.

Q. The barge, itself, won't stand up to more than forty tons?

A. It won't stand up to more than forty tons.

Q. Then she starts tipping?

A. Yes, sir; then she goes down under the water and will be unsafe and turn over on you, bottom up.

Q. After you had that new wire rove, what happened then?

A. Then the blocks were hanging down about four feet after the boom stood up straight or about ninety-five degrees, and then the block was about four feet off of the deck, so we decided—that is, Smith, the operator and I, that the best way to do would be to get that wire and cut that wire that length and put it on the drum. It would not be advisable to have it any longer, because too much wire on the drum cuts the wire up and interferes with the other drum, so we cut the wire and fastened it to the drum and then we put the chain sling on.

Q. How long a chain?

A. About ten or twelve feet—about ten feet, to my best knowledge.

Q. Then, what happened; what did you do with the barge; what did Mr. Benson do with it?

A. Well, that barge was laying in the slip, and we were waiting there, and Harrison had his barge at that slip, sunk.

Q. Whose slip?

A. Harrison's slip.

Q. That is a different slip from the Southern slip?

190 A. Yes, sir. And he said, "We want you to raise our barge, first," and he said, "All right." I said to Mr. Harrison, "You must see Mr. Benson about that," and Benson gave us both orders to go down to Harrison's to raise his barge up. That was the first work we done.

Q. After Mr. Benson gave you those orders, to go to Harrison's slip, what happened next?

A. Then we went back up to the Southern docks.

Q. Did you go to Harrison's slip?

A. Yes sir.

Q. What did you do after you got there?

A. They had slings and there was a sunken boat with wire around it, and we lowered our fall down and placed the derrick in position, and also, our fall down, and got our sling into that sling that was around that sunken barge of Harrison's.

Q. What did you do with it then?

A. We lifted her up.

Q. You lifted her up?

A. Yes sir.

Q. Who paid for lifting that barge?

A. Well, Mr. Benson paid the crew on the barge.

Q. Who did Mr. Harrison pay for lifting it?

A. Paid Mr. Benson.

Q. Do you know how much?

A. I don't know. That was Mr. Benson's bargain.

Q. Mr. Benson made the trade with Mr. Harrison?

A. Yes sir. I don't know nothing about that.

Q. How far is Harrison's slip from the Southern dry dock's slip?

A. It ain't far. I presume, about two city blocks.

Q. It is six or seven hundred feet?

A. Oh, it is more than that—a little more than that.

Q. What else did you use this derrick barge for besides raising Mr. Harrison's barge?

191 A. Then we went up to the Southern docks, after we were through with Mr. Harrison; then Benson notified me that Baker wants the derrick to go up the river to raise one of his barges.

Q. Who notified you?

A. Mr. Benson.

Q. Did you go up the river?

A. Yes, sir; the tugboat came and got us and went up the river and raised that barge.

Q. What kind of barge was that?

A. A derrick barge.

Q. Was that at the bottom of the river?

A. Yes, sir.

Q. Did you raise it?

A. Yes, sir; we raised it.

Q. Now, that lifting, did that cable or fall; did that part in any way, when you were lifting Baker's barge; did it break?

A. No, sir; because that would hold over one hundred tons. Each part was guaranteed twenty-five to twenty-eight tons, and I had seven parts.

Q. Did you have any trouble for breaking of that wire, in raising Harrison's barge?

A. No, sir; we heaved that barge down and the deck was six or seven inches out of the water.

Q. Did it tip the "Chickasaw" barge?

A. Yes, sir; down to seven inches of the water, and that is all that barge could stand to be safe, but we done the work all right.

Q. Now, who paid for that Baker barge; who paid for the use of the "Chickasaw" on the Baker job, if you know of your own knowledge?

A. I don't know.

Q. Did they pay you anything?

A. No, sir; I was just under Mr. Benson's orders. Mr. Benson was paying me and that was Benson's work.

Q. What was Benson paying you; $5.00 a day?

A. Yes, sir; I was there as a worker. He was paying me $5.00 a day, just like the rest of them.

192 Q. Did you get any money from Baker?

A. No, sir.

Q. Then, where did the derrick barge, the "Chickasaw," go from raising that barge for Baker?

A. After we raised the barge up the river for Baker, we brought Baker's barge down to Henderson's dry dock.

Q. Henderson's?

A. Yes, sir.

Q. Under whose orders was it brought down there?

A. That is what they wanted that barge down there for; to have it hauled up; Mr. Baker did.

Q. You brought Mr. Baker's barge down?

A. Yes, sir; the "Chickasaw" barge was holding her up in the sling. We could not turn her loose, or she would have gone to the bottom and we were holding her up like that when we got her down there, and then they got her pumped out and she would float herself.

Q. But the derrick barge "Chickasaw" brought this barge of Baker from the place where she sank down the river, to Henderson's dry dock, is that right?

A. Yes, sir; a tugboat came and brought both barges down there.

Q. And your barge, the "Chickasaw," the barge you were on, was holding up Baker's barge?

A. Yes, sir; holding up Baker's barge.

Q. How far was it from the place where Baker's barge had sunk, down to Henderson's?

A. I don't know; three or four miles.

Q. Then, what did Mr. Benson do with this barge "Chickasaw" after bringing Baker's barge to Henderson's?

A. To my best remembrance, that same tugboat, after we delivered her to the wharf safe, that same tugboat that brought us down there, took us back up into the Southern slips.

Q. Did you order that tug; did you pay for that tug; the tugboat that shifted you from where Baker's barge was raised; did you pay for that tug?

193 A. No. I think it was Captain Roberts had her brought up there.

Q. Did you pay Captain Roberts?

A. No, sir.

Q. Who paid him?
A. I don't know.
Q. Did Mr. Benson pay him?
A. I could not say if he did or not.
Q. You didn't pay him?
A. No, sir.
Q. You got no money from Baker?
A. No, sir.
Q. And you got no money from Harrison?
A. Sure not. I was working for Benson.
Q. At $5.00 a day, all t is time?
A. Yes, sir. I had no time to do anything for anybody else.
Q. Did Mr. Benson's barge "Chickasaw," do any other work besides raising Harrison's barge and Mr. Baker's barge?
A. We went back in the slip and got to work and raised Beaury Roberts' barge and we got her up and took her out of the slip and landed her there where Captain Beaury Roberts wanted her landed.
Q. Then, did you do any other work?
A. Yes, sir; took her down to Radcliff's.
Q. The Mobile and Gulf Navigation Company?
A. Yes, sir.
Q. What did you do with her there?
A. There were two big pontoons, shaped like two boilers, on the docks, framed in, and that was a big lift, too, and they wanted us to put that into the water off of the wharf, and we hooked onto that and put it in the water. It was a big lift, but the barge did it all right.
Q. Did the fall break any way?
A. No, sir; it would be impossible for it to break.
Q. Who gave orders for the "Chickasaw" to go from the Southern dry dock slips down to Radcliff's, the Mobile and Gulf Navigation Company?
194 A. Mr. Benson notified me that he wanted the barge down there.
Q. Were you being paid then, $5.00 a day?
A. Yes, sure I got paid.
Q. Were you paid any money from the Mobile and Gulf Navigation Company for lifting those pontoons into the water?
A. No, sir.
Q. Did you make any trade with the Mobile Gulf and Navigating Company for lifting those pontoons?
A. No, sir; I had nothing to do with that. Mr. Benson attended to that and I was working for Mr. Benson.
Q. Then what happened?
A. That barge was leaking and it was unsafe for that barge to be in the water any longer, and she was liable to go down, and Mr. Benson decided that he wanted her caulked and he took us over into Henderson's dock from Radcliff's wharf, to my best knowledge, and Mr. Benson had a sunken barge there, in that slip, and Mr. Ben-

son requested me to put wires around that barge. He wanted that lifted up and pumped out, so that he could get it out of the way. All right, I got my wires ready and Mr. Benson was over at Henderson's docks, too, off and on, and I says to Mr. Benson, I am ready, I have the wires there and I think it will do the work, and if you are ready we will hook on and Mr. Benson said, "Never mind, we won't bother with that now, just take your wires off and put it on the derrick."

Q. Where did you get that wire?

A. We had it on the derrick barge.

Q. Was that a part of the new wire?

A. No, it wasn't a part of that new wire, but it was a good wire that was on the barge before.

Q. Then, what was done with the "Chickasaw"?

A. Then, we took her across the river on this side from Henderson's dock and put her on that old Alabama dry dock.

Q. Did you stay on her or leave her?

A. I stayed on her.

195 Q. What did you do then?

A. General repair work, all the way through.

Q. Tell us what it was?

A. Well, chipping rust off the iron, painting, moving different things, just different things. Just work around a barge.

Q. Chipping iron off of where?

A. Off those iron frames.

Q. Did you do that yourself?

A. Yes, sir.

Q. What else did you do?

A. Well, painted a little bit and did general work, helping around from one thing to the other.

The DEPUTY COMMISSIONER. Are you talking about the barge now, that you got hurt on?

A. Yes, sir.

Examination by Mr. GRESHAM:

Q. Was there any other work being done on her?

A. Well, that boom was weak and it needed strengthening.

Q. Was any other work done on the "Chickasaw"?

A. On the dry dock it was caulked and they worked on some of those side spuds.

Q. What other work did you do besides chipping and painting the A frame?

A. I helped to paint.

Q. Did you use a brush yourself?

A. Yes; I helped paint.

Q. What other work did you help to do?

A. I helped clean up that engine and different things.

Q. Did you do any work on the cabin?

A. Different things that way.

Q. Did you do any work on the cabin?

A. Yes, sir.

196 Q. What did you do?

A. I helped to put a new roof on the cabin.

Q. Did you do that yourself?

A. Yes, sir; with the rest of them.

Q. Did you use the hammer and nails yourself?

A. Yes, sir.

Q. Who was paying you at the time you were doing this repair work?

A. Mr. Benson was paying me.

Q. At what rate?

A. Five dollars a day.

Examination by the DEPUTY COMMISSIONER:

Q. How long did you work at that?

A. To my best judgment, I was about five days on that dry dock on this side of the river, and then we were taken into the water and then the boat took us over across the river to the other dry dock and then they done some work on the boom, and I think they stayed over there about three weeks or maybe four weeks.

Q. All of this was before you got hurt?

A. All of this was before I got hurt.

Q. Were you working on her during those three weeks?

A. Yes, sir.

Q. You got $5.00 a day?

A. Yes, sir.

Q. Did you work on Sundays?

A. No, sir.

Q. Six days a week?

A. Yes, sir. Some of them worked on Sundays, but I didn't.

Q. After the barge was taken across the river, what work was done on it?

A. They reenforced that big boom and we laid there and I worked on the house and on the cabin and all the way around and Charley says he wanted that new fall oiled and I oiled that fall and

197 then Charley says, Knudsen, let's reeve up all those sheaves and see how it will go.

Q. How many were there?

A. Four. And I took hold of the fall and rove up all of it and he said well, we will change it back like it was before and I did that and Mr. Benson had brought some big blocks there with six sheaves in it and he said, I want those rigged up and I said all right and I rove those up and the fall then was too short for a six big blocks and I told Charley that it would not do and he said, well, all right, we will rig up the other kind again and I took them up and rove up the other way.

Q. That was all while the barge was over at the Alabama?

A. Yes, sir; and Charley said, that wire is too short.

Q. You mean Mr. Benson?

A. Yes, sir; Mr. Benson said, the wire is too short now, and I said, well, now, that can be spliced if you want those blocks and I said, it ain't necessary to have six blocks. The blocks you had before are the best blocks and those are he has in his derrick to-day working them. He said, do you think you can splice the wire? and I said, yes, sir; any time you want it done, I will splice it and I said, do you want it done now, and he said, well wait awhile and we will see and I said, all right, and I kept working along for a few more days and then he says to me, that wire is entirely too short and I says, yes, if you use those blocks, and he says well, we have got to have the wire spliced and I said, all right, I will get ready for it and that day I took the wire off that big reel he had there and got ready and Charley says to me, don't put the splice in until you notify me and when I got ready I phoned Mr. Benson and I said, do you want that wire spliced now, I have everything ready, and he said no, let it go for awhile and I left it that way and put it back on the reel again and I worked along there until there was
198 no more work for me to do and I went to Mr. Charley and I told Mr. Charley Benson, there ain't no more for me to do there so I will quit, and he said, all right, and I said, I don't want to stay when there is no more work to do and he said, all right, you can go, any time I need you I will call for you, and I said, all right, I thank you, Charley, I will be glad to work for you, so I left. So a long time after, it may be two or three weeks—something like that—Charley rang me up over the telephone.

Q. Mr. Benson?

A. Yes sir.

The Deputy Commissioner. Every time you say Charley you mean Mr. Benson?

A. Yes, sir.

Examination by Mr. Gresham (continued):

Q. Sometimes you say Mr. Benson and sometimes Charley, every time you say Charley or Benson you meant Charley Benson, the defendant in this case?

A. Yes, sir; so I said all right, Mr. Benson, I will, and he says I will want it spliced in about a few days and I said all right and I took a trip down the coast. I think it was Thursday night I went down the coast and I came back on a Saturday night. When I came back about ten or eleven o'clock on that train from down the coast there was a slip there written on my pillow case and one on my dresser in my room from Captain Borey Roberts, the gentleman who is sitting here before me, stating this: That Mr. Charley Benson wants you to come on board the barge "Chickasaw" Monday morning. Of course that was the Fourth of July, and splice this wire. All right that was on the paper. So then Sunday night, Mr. Borey Roberts had gone to Biloxi and he came back from Biloxi, but early in the morning he came in my room and said, Knudsen, do you

want to do that work for Mr. Benson? And I said, Yes, I
199 will work for Mr. Benson, and he said, He is in a hurry for this barge and it has got to go to the State docks to do work and he wants to have this work done to-day which is Monday, the Fourth of July. So I says, I will go, and so we got on board that morning. I got on board a little before Captain Roberts did and I raised steam. Put steam on the boiler.

Q. Raised what?

A. Steam—and got ready. And then there was another man came on board that claimed that he was a new operator.

Q. Who was he working for?

A. Mr. Charley Benson. I asked him, Who sent you on board here?' And he said, Mr. Benson, and he said, I am supposed to be the operator on this derrick and Borey Roberts was there and he came on there too and he was building a coal bin on the other end of the barge for coal to be put on the deck. Captain Borey Roberts asked me which way would be the best way to do this and I said, we have to swing this derrick around so that I can get this big large boom on the dock and he said all right, and I asked Mr. Roberts if he had any rope there and he said, yes, and he handed me a brand new rope and I tied that on that chain sling that was fastened to the block and I laid that over on the wharf and that wharf was very decayed and everything was bad about that wharf and the wharf wasn't much but I tied it the best I knew how on that and then I went to the throttle there and the operator said, I will run the machine and I said, all right, I will give you the signal and I took my stand in the front of the boat and I gave my operator this hand for a signal and kept my eye on the wharf where that fall was made fast Now, I told the operator to be very careful to go slow and watch my signals and he said he would so I went slow until he got in some of the slack off the fall and I stopped him. I put my hand up like that—that means stop—so I asked him to swing the boom over very slow and easy over this way and he
200 did and I stopped him. I put both hands up and stopped him. Now, I says, you must go ahead but go ahead slow and watch my signals and when I do like that, that means slow—that is the natural signal—so I stood with both hands up like that and watching that wharf over there and kept on watching it like that—so all at once, I stopped him and put both hands up like that but he kept going and I used the word "Stop" and hollered "Stop" as hard as I could and the machine kept going and I seen that the wire was going through the blocks and I was standing in a position like this and I said, if this man don't stop I have to run and I put my eyes on the deck to make a leap and just as I done that here comes the fall—it broke aloose off the wharf that I had it fastened to and struck me and knocked me down this way and then that fall dragged right in on the derrick and caught hold of my leg and broke my knee kind of sideways, and splintered it all to splinters.

The DEPUTY COMMISSIONER. Where were you standing at this time; on the wharf or on the boat?

A. On the derrick in front of the operator so he could see me.

Q. Were you standing on the barge?

A. Yes, sir; the barge "Chickasaw."

Mr. GRESHAM. You were standing there when you were hit?

A. Yes, sir.

Q. And the barge was afloat?

A. Yes, sir.

Q. In Mobile River?

A. Yes, sir.

The DEPUTY COMMISSIONER. Where the seagoing vessels come in?

A. Yes, sir; there was one laying a few feet from us—a big steamer and he seemed like he put more steam on it and when
201 I gave signals like that, that means as little as possible, so when I seen he done all this I just stuck up my hands for him to stop but he didn't stop.

Q. When you were knocked down, what were you knocked down on?

A. On the barge.

Q. On the deck of the barge "Chickasaw"?

A. Yes, sir; I was knocked down and stunned at the time and when I came to again about half a minute later, I seen that my foot was all twisted up like that. I got hold of it and put it down like that and felt everything was broken in there and I hollered to Captain Borey Roberts. He was over in the other end of the barge building a coal box and I hollered to him and told him my leg is all broke up.

Q. Did Roberts bring you back across the river?

A. Yes, sir.

Q. You were then taken to the marine hospital?

A. Yes, sir.

Q. And you were there ever since?

A. Yes, sir. And he came and took me up on one side and I told Captain Roberts——

Mr. KILBORN. I object to any further conversation in the absence of Captain Roberts.

Mr. GRESHAM. I don't think there are any more details necessary about the injury.

DEPUTY COMMISSIONER. No; he has explained it very fully.

Examination by Mr. GRESHAM:

Q. You have told us about how you were working on the barge "Chickasaw" while it was being repaired over at the Alabama?

A. Yes, sir.

Q. And how those blocks were roved and reroved under Mr. Benson's instructions?

202 A. Yes, sir.

Q. Were you paid at that time?

A. Yes, sir.

Q. How much were you paid?

A. Five dollars a day.

Q. Were you expecting pay the morning that you were over there, the morning you were hurt?

A. Yes; sure.

Q. Was there anything said about your doing that work for nothing?

A. No. After we were through with Captain Roberts' barge then I went to work for Captain Benson again and worked a day or two. It took us about two days to raise Captain Borey Roberts' barge away from that Southern slip; about two days, and that time I didn't get my pay for that from Benson and then I was through with that and of course I was working then for Benson right along doing his work.

Q. You moved that boiler for the Mobile & Gulf Navigation Company after you got through with the "Apollo"?

A. Yes, sir.

Q. And Mr. Benson paid you?

A. He was paying me right along.

Q. And you went over to Henderson's and started raising Benson's other barge?

A. Yes, sir.

Q. And he was paying you right along?

A. Yes, sir.

Q. And he was paying you at the Alabama?

A. Yes, sir; except one thing—when I was doing Charley Benson's work there was one week I didn't go to the office and get the pay and I figured that would pay up for the time I was using this barge at the Southern docks and after that I went and got my pay right along but there was one week that I gave him services for the use of his derrick but there was three or four or maybe five weeks that I was paid after that.

203 Examination by Mr. KILBORN:

Q. When the barge was up at Chickasaw it was doing digging work?

A. It had to dig itself its way out.

Q. It wasn't listing but was doing digging work?

A. Yes, sir.

Q. And you got a contract did you not, to do some work over on the S.S. "*Apollo*" for her owners?

A. That was long before that work.

Q. But you had a job over there on the "*Apollo*"?

A. A long time before that.

Q. And you had borrowed Captain Beauregard Roberts' derrick barge from him to do what work with?

A. Yes, I had his derrick to do that work with.

Q. Without any pay; you were not paying him for the use of that boat were you?

A. Well, that was between him and I. I paid him in a way.

Q. You had his derrick and it sunk at the Southern dry docks slip?

A. Yes, sir; it did.

Q. Then didn't you and Mr. Benson and Captain Beauregard Roberts have a conversation down here in Bienville Square when you wanted to get Mr. Benson's derrick barge that had been working at Chickasaw for the purpose of using it in raising Captain Beauregard Roberts' sunken barge? Did you have that conversation in Bienville Square with Mr. Benson?

A. The first thing that Borey told me about it is that Benson is going to let me have the derrick for a day or two.

Q. Then you met Mr. Benson in Bienville Square didn't you?

A. Yes, sir.

Q. And talked to him about that?

A. I don't know what we talked about, but we met there and what the conversation was I really don't know.

Q. Was there anything said in that conversation about your using his barge, the "Chickasaw"?

204 A. No, I don't think so.

Q. When and where did you make the arrangements with Mr. Charley Benson whereby you could use his barge, the "Chickasaw," in raising Captain Roberts barge?

A. Captain Borey Roberts' was the first one that told me about that. Charley is going to let us have his barge a day or two is what he said.

Q. Where was that?

A. I think he told me that at his own house.

Q. Then when did you see Mr. Benson about it?

A. Well, I don't know.

Q. Can't you tell us where you saw him?

A. I saw Benson right along nearly every day.

Q. Where did you talk to Mr. Benson about using his derrick barge in raising the Roberts barge?

A. I really don't know. I seen Charley Benson pretty nearly every day.

Q. In that conversation in Bienville Square on one Saturday night—didn't you see Mr. Benson with Captain Roberts and didn't Mr. Benson agree there in that conversation on a Saturday night in Bienville Square that you could have the use of that barge and didn't you tell him that you would only want it a couple of days for that purpose?

A. I don't know. I don't remember that.

Q. Do you deny that that happened?

A. I know that we were together in the square but what conversation it was I don't know.

Q. Was it about the barge?

A. I don't think so. I don't know what it was.

Q. Your mind is a complete blank on that subject?

A. On that subject it is a blank.

Q. On what arrangement did you have the use of Mr. Benson's barge in raising the Roberts barge?

A. Captain Borey Roberts said that we could use it. Benson said he was going to have his barge one or two days.

Q. That was for your own purposes that you were using it?

205 A. For Borey's just as well.

Q. For you and Borey in raising his barge?

A. Yes, sir.

Q. And previous to that he had let you have the barge for use in the "Apollo" job?

A. What?

Q. Previous to that time Beaureguard Roberts had loaned you his barge?

A. Yes, sir.

Q. And it had sunk while in your possession had it?

A. Yes, sir; I had done got that work up a long time, about the "Apollo"; Borey Roberts' barge was in the slip and she was working for the Southern docks.

Q. It sunk while you had it didn't it?

A. I was operating his barge but Borey Roberts got paid for the Southern docks. He was supposed to get paid.

Q. It sunk while you had it on the "Apollo"?

A. Yes, sir. She was tied up there in the Southern docks and the barge was tied up in the Southern docks and there was a watchman there at night supposed to watch all those boats.

Q. But something did happen to her?

A. Yes, sir; she sunk there.

Q. And you had to get Mr. Benson's barge to raise it?

A. Well, I was undecided.

Q. Just answer the question, yes or no.

A. I was undecided which boat I was to get; Benson's or Murnan's and Borey Roberts says, We will get Benson's barge, so that was all right with me.

Q. Benson's barge on which you were working at Chickasaw had not been used up to that time for listing had it?

A. No, not for listing.

Q. And he had a new spool of this very heavy cable on board the barge, didn't he?

A. Yes, sir.

206 Q. And in order for you to use the barge in raising Captain Roberts' barge you had to rig the lists on the Benson barge didn't you, with new cable?

A. No, sir.

Q. You could not use it in the condition it was in, could you?

A. Yes, sir; I could. Captain Borey Roberts' barge was a small one, about as small as ever was in the river.

Q. What conversation did you have with Mr. Benson about using that new spool of cable?

A. Benson brought a new spool of cable on board, and said, Knudson, I want you to put on a new topping lift—that is to hold the boom up in the air. That is about five or six wires up there.

Q. You did that?

A. We did that at Chickasaw.

Q. I am not talking about what happened at Chickasaw. What conversation did you have with him about rigging up those blocks after that with this new spool of cable?

A. Then Charley says to me, we will have to reeve up that new wire. And I says, Yes, if you are going to do any heavy work in this river with it it is better to have the new fall than the old fall.

Q. Then you reeved it up?

A. Yes, sir.

Q. For the purpose of listing Beauregard Roberts' barge?

A. It wasn't for that purpose but it was for Harrison's purpose mostly, because I knew it was a heavy barge and that was the first work we done.

Q. You came down from Chickasaw for the purpose of listing Roberts' barge and that is the reason you brought it down there?

A. No, sir; it was not the reason. He wanted to get the barge down to Mobile from Chickasaw because it was inconvenient for everybody to go up there. He wanted to bring the barge down to Mobile.

207 Q. When you were over at the southern dry docks slip for the purpose of raising Beauregard Roberts' barge—wasn't it then that you cut this wire cable?

A. Yes, sir; so then Charley says to me——

Q. Never mind now, I will conduct the examination and you answer the question.

Mr. PHLANS. I think the witness has a right to proceed with his statement.

DEPUTY COMMISSIONER. He can explain his answer. He is not confined to yes or no.

Q. Mr. KILBORN. You cut the wire there at the Beauregard Roberts job?

A. Charley Benson insisted very much to put in the new wire. He insisted on that at Chickasaw. Well, we didn't put it in at Chickasaw. We were in such a hurry to get out of there and get away from there and I thought we could put it in at Mobile, and did at Mobile; and he said, Do you think that old wire will do all right to hold up the bucket? And I said, Yes, which it did; and he said, Well I got this new wire for the purpose of a new fall and a new topping lift.

Q. Did you ever get permission from Mr. Benson to cut that cable in the manner in which you did cut it, or instructions from him?

A. Yes, sir.

Q. To cut it like you did cut it?

A. I got permission to use my own judgment.

Q. After you had cut it, you contend that the first job that you did was to raise a barge for Harrison?

A. Yes, sir.

Q. And then that you went to work and did this Baker job?

A. Yes, sir.

Q. And then you did the Radcliffe job?

A. Yes, sir.

Q. And then you came back and lifted Borey Roberts' barge?

208 A. Yes, sir.

Q. That is what you contend?

A. Yes, sir.

Q. Did Charley Benson tell you you had no right to cut that cable and you did wrong, and he expected you to repair the damage?

A. No, sir.

Q. He never did tell you that?

A. No, sir.

Q. Never did fuss at you and tell you you had ruined a valuable cable and he expected you to repair it?

A. He said I cut it short.

Q. Didn't he tell you that you had practically ruined the cable that cost him about $500 and that he expected you to repair the damages?

A. No, sir; he said I cut it short, and I said, Charley, that cable can be spliced as good as it ever was, and I said, How do you want this; and he said, I want that block 15 feet in the water; and I said that would be too long; and I said, When a boom is up high, about ninety-five or as far as it would go, then if that block is rove up about three sheaves that is all you need, and then if it will go down 4 or 5 feet of the deck, that is all you need.

Q. When Mr. Benson talked to you about reeving up those blocks, how many sheaves did he tell you to reeve up?

A. He asked me would it be necessary to reeve up all the four sheaves.

Q. Didn't he tell you if you rove it up at all you must reeve it up four sheaves?

A. He asked me was it necessary to use all four sheaves, and I told him I didn't think it was necessary to use four sheaves.

Q. What did he say then?

A. He didn't say nothing.

Q. Now you were working on this barge up at Chickasaw for $5 a day?

A. Yes, sir.

Q. As a member of the crew of the barge?

209 A. Yes, sir.

Q. And you continued to work as a member of the crew at $5 a day until about fifteen days before you were hurt, didn't you? How many men were working on that barge from the time you were out at Chickasaw until the time you quit working on it?

A. About four men; three or four men.

Q. In what capacity were they working on there?
A. I don't know what they were getting.
Q. What were they doing?
A. Different kinds of work about the barge—general repair work.
Q. And operating the barge too?
A. No; we had one operator.
Q. When you went to do a job, how many men did you have working on the boat?
A. Three or four of us.
Q. You were engaged in operating the barge when she did the job at Harrison?
A. It was left with me and the engineer.
Q. You and the engineer operated the barge when she did the Harrison job?
A. Yes, sir; it was left with us.
Q. You and who else operated the barge when you did the Baker job?
A. The same operator, or engineer, and myself.
Q. And you would give instructions to him as to when to go ahead and operating the engine?
A. No; when we did the Baker's barge I took my orders from Baker and I gave my orders to the operator.
Q. When you went to Radcliff's you directed the operation of the barge at that time?
A. Well, I put the slings on and I told the operator, I am ready for you to go ahead; and he went ahead.
Q. You directed the manner in which the work should proceed?
A. He can direct that himself.
Q. Who did?
210 A. The operator. He was there to handle the boom and and the levers and all that.
Q. You were working with him on the job, in conjunction with him?
A. Yes, sir; in conjunction with him.
Q. When they put the barge over on the dry docks to have work done, you were clipping off rust and painting around like a sailor does on a boat?
A. I was working right along; general repair work; yes, sir.
Q. Sailors on boats generally do that kind of work, don't they?
A. I expect they do all the time; yes, sir.
Q. When they are not navigating they are busy clipping iron rust and painting?
A. Yes, sir.
Q. Did Benson agree to pay you?
A. Sure.
Q. Wait until I ask you the question. Did Benson agree to pay you anything if you would come back on the boat in July and splice this cable?
A. Benson knows I wasn't working for nothing.

Q. Answer the question, whether he agreed to pay you anything!
A. I would not work for nothing.
Q. Did you tell him that!
A. He knew it.
Q. How did he know it!
A. When a man puts me to work he expects to pay me.
Q. Do you expect that he expected to pay Borey Roberts for his work on that day!
A. As to transactions between them I don't know anything about it.
Q. You never did tell Mr. Benson that if you came back and spliced that wire that you would charge him for it!
A. He knew very well that I would not work for nothing and I could not live to work for nothing.
Q. And you infer from that that he knew you expected pay!
211 A. Sure.
Q. Do you know what Mr. Benson got for the use of that derrick barge on other peoples work!
A. No, sir.
Q. Do you know how much a day he would charge for it!
A. No sir.
Q. Have you any idea!
A. I could not say.
Q. Don't you know it would run up to a hundred dollars a day!
A. I could not say.
Q. You know what other people charge for the use of barges like that!
A. It depends upon what agreement you make.
Q. This is a right fine derrick barge!
A. It is a good barge.
Q. What is the reasonable value of that barge!
A. I do not know. I could not say.
Q. About how much!
A. I could not say.
Q. You have been working on the water all your life!
A. About fifteen or twenty thousand; fifteen thousand something like that.
Q. Don't you know what people ordinarily get for the use of a derrick barge like that!
A. Sometimes fifty dollars, sometimes twenty-five dollars, sometimes twenty-five dollars.
Q. Did you ever know anybody to use a barge like that for twenty-five dollars a day!
A. Yes, I had Towart's barge for twenty-five dollars a day.
Q. Is that the same kind of barge as this was it!

Q. It wasn't near as big as this?
A. It wasn't as big as this.
Q. How many days did you actually use Captain Benson's barge in raising Captain Roberts'?
A. Two days.
Q. And you say you worked one week for him and got no pay for it?
A. I worked one week to pay up for those days used of that barge.
Q. Did you tell Mr. Benson that?
A. No; I didn't tell him nothing about it. We just figured it out ourselves.
Q. Who did you figure it out with?
A. I didn't go up and claim nothing for it.
Q. You mean you didn't claim your wages?
A. When I came to the office after that, my check was there not for that week but the week I put in there.
Q. Did you tell Mr. Benson you were going to work a whole week for nothing for the use of the barge?
A. No, sir; I just gave him those few days.
Q. How many days?
A. About six days, I think.
Q. Did you tell him you were doing that?
A. Benson knew it.
Q. Did you tell him that?
A. No.
Q. Don't you know, as a matter of fact, you never did any such thing as work a week free of charge for the use of that barge?
A. I sure did.
Q. And never did tell him you were going to do it?
A. I never did go to the office.
Q. But you never did tell him that?
A. No; I never did go up there.
Q. And never did tell his young lady in the office about it?
A. No, sir; but the week after that I went up there and they gave me a check for that week.
Q. For what week?
A. You see I gave him one week and all the rest of the weeks I got it for.
Q. Did you tell the young lady that you were giving them a week?
A. No, sir.
Q. And didn't tell his bookkeeper?
A. No, sir.
Q. Or him either?
A. No, sir.
Q. Don't you know you went back there to collect that pay on the 1st of July out of a conscience that he had been good enough to let you have the barge and you owed him the debt to pay for repair of the cable?
A. I do any damage to the cable.

Q. He was contending that you damaged it?

A. He—if he was going to take it as damage he would have taken it out when I was working for him.

Q. Wasn't he contending that you had damaged his cable by cutting it like you did?

A. No, sir. Charley didn't know himself if it should be that way or longer, or the way I had it. He didn't know.

Q. Didn't you go there on the fourth of July with Mr. Beauregard Roberts and his man Lennis to repair that cable out of a conscience that you owed Mr. Benson the debt of fixing that cable or trying to because he had been good enough to loan you that barge to raise Captain Beauregard's barge?

A. No, sir.

Q. And how many days had it been that you worked for Mr. Benson before you got hurt; how many days had you been working for somebody else?

A. To my knowledge, I don't believe I was working for anybody else.

Q. You had been out of Mobile?

A. I went down the coast and stayed about three days and then I came to Mobile here and came back Saturday night and Monday morning Charley wanted me to put a splice in that wire for him.

Q. When was the last time you had made a day's work for Charley Benson before you got hurt?

A. I could not say when it was I quit Charley.

Q. You were hurt on July fourth, weren't you?

214 A. Yes, sir.

Q. Don't you know you were paid off on June 11th preceding the day you were hurt?

A. Yes, sir.

Q. And you had done nothing for Charley Benson between June 11th and the day you were hurt?

A. That is what I say, about two weeks.

Q. That you were idle?

A. Yes, sir; a little more than two weeks.

Q. Who was on that derrick barge with you when you cut this cable?

A. Smith, the operator, was there. I believe just him and I were there. I could not say if there was any others there, but I know us two were there.

The Deputy Commissioner:

Q. When were you born?

A. 1869.

Q. What month?

A. The 24th of April.

Mr. Cranman. How many feet of wire would the drum on the winch hold?

A. I really don't know how many feet it will hold. I really have the slightest idea.

(This witness was thereupon excused.)

Mr. GRESHAM. That is the claimant's case.

C. D. SMITH, a witness called by Mr. Kilborn, after having been first duly sworn by the deputy commissioner, testified as follows:

Examination by the DEPUTY COMMISSIONER:

Q. What is your name?

215 A. C. D. Smith.

Q. Where do you live?

A. 1710 Charleston.

Q. Mobile, Alabama?

A. Yes, sir.

Examination by Mr. KILBORN:

Q. Were you formerly employed by Mr. Charley Benson?

A. Yes, sir.

Q. In what capacity?

A. Engineer.

Q. Of what?

A. Of the derrick boat.

Q. The "Chickasaw"?

A. Yes, sir.

Q. Did you know Joe Knudsen?

A. Yes, sir.

Q. Was he employed also at the same time by Mr. Benson?

A. Yes, sir; he came there after I went there.

Q. In what capacity was he employed?

A. As rigger, I suppose, and general workman on that boat.

Q. Where was the boat when you and Knudsen were first working on it?

A. Chickasaw.

Q. What kind of work was it doing up there?

A. We were dredging out of Chickasabogue.

Q. Dredging a way out of there?

A. Yes, sir.

Q. Do you know whether Mr. Benson got any new spools of cable and put it on that boat?

A. Yes, sir.

Q. When was that?

A. I don't remember just the date, but it was before we got out of Chickasaw.

Q. Before you got out of Chickasaw?

A. Yes, sir; a good little bit.

Q. Did you rig any topping lift out of that new spool of cable?

A. Yes, sir.

Q. Did Mr. Benson give any instructions to Knudsen about any [illegible] of that cable or as to whether it was to be cut or not?

A. Yes, sir; he gave us orders about it.

Q. What did he say about it?

A. Well, we were there in Chickasaw. He told us while we were there that if we had to have a swing cable we could cut a short piece of swing cable, but he didn't want that cable cut; that he wanted it for a fall cable.

Q. Not to cut it except a small piece of swing cable?

A. Yes, sir.

Q. How much would that be?

A. If I remember right, it was eighty feet.

Q. After that did Mr. Knudsen borrow that derrick dredge for any purpose?

A. Yes, sir. We had it at the Southern shipyard up there.

Q. How did the derrick barge get from Chickasaw down to the shipyard?

A. Captain Roberts towed it down.

Q. Captain Beauregard Roberts?

A. Yes, sir.

Q. For what purpose did you go there?

A. We came down to pick up a derrick boat of Captain Roberts that was sunk.

Q. When you got there did Mr. Knudsen cut that cable?

A. Yes, sir.

Q. How did he cut it? In what operation did he cut it?

A. Well, we ran it through the sheaves and cut it with a cleaver.

Q. Did Mr. Benson give any instructions to do that in the way in which it was done?

A. No, sir; not as I know of.

Q. Was he there when it was cut?

217 A. No, sir.

Q. Who was there?

A. Mr. Knudsen and myself.

Q. Were the blocks reaved up after it was cut?

A. We had the blocks reaved on the docks out there and rode the cable over the boom and hooked it to the machine.

Q. Did that leave a great quantity of cable still on the spools?

A. Yes, sir. There was a good deal of the cable left on the spools.

Q. After you had cut the cable what did the derrick barge do?

A. We went down to Mr. Harrison's shipyards and picked up a boat down there, a sunken boat down there.

Q. Then what did it do?

A. We went back to the Southern and if I am not mistaken we pulled the cab off that derrick boat and taken the engine and the boiler off.

Q. Off of Captain Beauregard Roberts' derrick boat?

A. Yes, sir. And then we went and taken a boat up for Belle Sand and Gravel Company.

Q. Then what did you do?

A. We carried that down to Harrison's yard and when we got through with that job we went back to the Southern yard and picked up Captain Roberts' boat.

J.

Q. Captain Beauregard Roberts' sunken boat?

A. Yes, sir.

Q. How many days in all was the barge being used in working Captain Beauregard Roberts' sunken barge, in taking the engines off and the cab and raising it?

A. Well, I could not say just exactly what time we put in on that boat, but we were there and doing those other jobs about ten or eleven days, all told.

Q. Out of the ten or eleven days, how many days, to the best of your recollection, was devoted to raising Captain Roberts' boat?

218 A. I could not say, exactly, but we were three days on those other two jobs and then reaving the cable—about seven or eight days.

Q. You were seven or eight days on the Roberts job?

A. We were up there that time, but I don't know.

Mr. PILLANS. I understood the witness to say, probably erroneously, that he was seven or eight days.

Mr. KILBORN. How many days were you reaving the cable?

A. Just part of one day on that.

Q. How many days—how many—I don't mean the exact number of days, but your best recollection—were you engaged in working on the Roberts job; was it more than two days?

A. Yes, sir.

Q. How much more than two days were you there?

A. That is a pretty hard question to answer because we were there and it has been a long while since we done that work and it is pretty hard to say what time we did work on it. It is a pretty hard question to answer just how much time we did put exactly on the job, you see; but I would say that we were at this place, outside of this other work, something like seven or seven and a half days that we were up there outside of this Baker and Harrison work.

Q. You were seven days at the Southern and three or four days on the other jobs?

A. Yes, sir.

Q. While you were lying at the Southern were you busy pretty much all the time with the Roberts' work?

A. Mr. Knudsen was getting his slings around the boat and getting ready to pick it up.

219 Q. It took him some time to get his sling and riggings around and get the boat up?

A. Yes, sir.

Q. And what assistance did you have up there doing the Roberts job?

A. Well, we had one man there I think about one day or maybe two days.

Q. During the time you were on the Roberts job who paid your wages?

A. When we were on the Roberts job?

Q. Yes.

A. Mr. Benson.

Q. During that whole period of ten or eleven days who paid your wages?

A. Mr. Benson.

Q. Did anyone ever pay you anything and did Knudsen ever pay you anything?

A. No, sir; I was working for Mr. Benson under a salary.

Q. How much?

A. $150.00.

Q. A month?

A. Yes, sir.

Q. Did anybody there other than Benson pay you for any time you put in while the Roberts barge was being raised?

A. No, sir.

Q. You got all your money from Mr. Benson?

A. Yes, sir.

Q. Captain Roberts and Mr. Knudsen paid you nothing whatever?

A. No, sir.

Q. Did you ever hear Mr. Benson get in behind Mr. Knudsen about having cut this cable?

A. Yes, sir; they were saying something about it down at Henderson's yards.

Q. Did Mr. Benson tell him he should not have cut it?

Mr. GRESHAM. We object to his leading the witness.

220 Q. Well, what did he say about it having been cut?

A. I didn't hear the whole conversation but he told Mr. Knudsen that he had ruined the cable by cutting it in two. He could not reach down in a ship with it in that condition, and Mr. Knudsen said "If you think it is too short I will splice it."

Q. How long did you continue to work for Mr. Benson after that? Were you working for him when Knudsen was hurt?

A. No, sir; I think I left the employment of Mr. Benson something like the 26th of June, or somewhere along there.

Q. You worked for him until about that time?

A. Yes, sir.

Q. After the Roberts job was completed, did Knudsen continue to work for Benson?

A. Yes, sir; he worked on several days after that.

Q. In what capacity; what was he doing?

A. Well, it was general work then. We were overhauling, more than anything else; cleaning up and scraping the iron and painting, and so on.

Examination by Mr. GRESHAM:

Q. As I understand it, the conversation you had with Mr. Benson when the barge was at Chickasaw—Mr. Benson said he could cut a small piece of cable for a swing cable?

A. Yes, sir.

Q. And he wanted to use the rest for a fall?
A. Yes, sir.
Q. A fall is the wire rope that leads from the drum to the head of the boom and then through a block down there, to raise the load?
A. Yes, sir.
Q. And that is what the rest of the cable was used for?
A. Yes, sir.
Q. That is what you rigged the cable for, over at the Southern dry dock?
221 A. Yes, sir.
Q. Do you know anything about how much Mr. Benson got for raising the Baker derrick barge, Mr. Smith?
A. No, sir; I don't know anything about the agreement on the Baker job. The Baker job, you say?
Q. Yes, sir.
A. No, sir; I don't know how much he got on that job.
Q. Mr. Benson made that trade with the representatives of Baker?
A. Yes, sir; Mr. Benson handled the business end of it altogether.
Q. And that is also true with regard to Mr. Harrison's barge?
A. Yes, sir.
Q. That block was a four-sheave block that you all reaved?
A. Yes, sir.
Q. That barge of Baker's that you got up was also a derrick barge sunk in the river?
A. Yes, sir.
Q. It was a pretty heavy barge?
A. Yes, sir; I guess that barge—it would come something like thirty-five or thirty-six or maybe thirty-eight tons, with the water in it.
Q. Did you have any trouble? Did your fall break, or have any trouble raising it?
A. No, sir.
Q. Did you have any trouble raising Mr. Harrison's barge?
A. No, sir.
Q. And both the Baker barge and the Harrison barge were raised after you all rigged this new fall?
A. Yes, sir. The Harrison job was heavier than the Baker job.
Q. Did it tip the barge any in raising it?
A. Well, it pulled her down—I can't say exactly how low.
222 Q. But the weight did pull the head of the barge down?
A. Yes, sir; it pulled the head of the barge down.
Q. But you had no trouble with your fall, did you?
A. No, sir.

Examination by Mr. KILBORN:

Q. Was the fall rigged long enough to go down in the hold of a vessel, the way Mr. Knudsen rigged it?
A. It would go in the hold, but not to the bottom of the ship.

Q. Had Mr. Benson given any instructions about rigging it long enough?

A. He said he wanted it to reach down to where he could take machinery, or anything, out of the bottom of the ship.

Q. Was it rigged that way, the way Knudsen had rigged it?

A. Well, you would have had to boom down mighty low.

Examination by Mr. GRESHAM:

Q. How many feet were left on that reel? You said a good many feet.

A. Several hundred feet. I don't know. I would say a few hundred feet, but I could not say how much.

Q. Is there any wear on that fall on the drum of the winch when it is in use on the drum?

A. How is that?

Q. When a fall is rove over the drum of a winch, like on that barge, and it is run back and forth, is there any wear on it?

A. Yes; there is a wear to it.

Q. Now, as you understand it, Mr. Benson wanted it rove so that he could lift heavy machinery from a dock onto the ship, or from a ship onto the dock?

223 A. Yes, sir.

Q. How much further down would that fall have had to go to have gotten to the bottom of the ship? About ten or fifteen feet?

A. Something like that. Of course, I can't say, because I don't know anything about ship work.

Q. It was about ten or fifteen feet short, according to Mr. Benson's claim, is that right?

A. Yes, sir.

Q. And that is all?

A. Yes, sir.

Examination by Mr. KRAEGER:

Q. Was it long enough to reeve a six sheave block, the way Knudsen fixed it?

A. No; not the way he fixed it. We only had three turns through a four sheave block.

Q. The way he fixed it was it long enough to reeve a four sheave block?

A. No, sir; not to reach down.

Q. How much short was it to reeve a four sheave block that way?

A. 192 feet.

Q. In other words, you had a four sheave block on there and Knudsen rigged it only three sheave?

A. Yes, sir.

Q. And if he had rigged it four sheaves, it would have been 192 feet of being long enough to reach out down to the hold of the ship?

A. Yes, sir; to my judgment. Oh, no; that was to come down to where we left it at, from where it hangs out through three sheaves.

Q. How many sheaves was rigged, the way Knudsen rigged it?

A. Three.

Q. And, if he had rigged it four sheaves would it have come down to the deck, the way he cut it?

A. No; that would have made it still shorter. The fall is 96 feet and the sheave is off the deck, something like four feet.

Q. So it takes twice ninety-six?

A. It takes twice the ninety-six to come on down and make another turn.

Q. And it would have been how much shorter on a four sheave?

A. It would have been 192 feet to reeve the four sheave to come down to leave it hanging the way it was.

Q. It was way too short for a four sheave purpose?

A. Yes, sir.

Examination by Mr. GRESHAM:

Q. The object of having more than one sheave is simply to give greater lifting power?

A. Yes, sir.

Q. Now, rove through those three sheave, you had plenty of power to lift anything down there you had to lift, as far as the fall was concerned and even tip the boat into the water?

A. Yes, sir.

Q. Did it seem to you, proper, at that time, to reeve that fall through only three sheaves and to save the rest of that wire?

A. Under the consideration of the power, the three sheaves was enough, but under the consideration of speed, they should have had four sheaves. A four sheave turn would gear you down slower.

Q. The more sheaves on the block the slower the weight goes down?

A. Yes, sir.

Q. And the less sheaves there are, the quicker you can handle it?

A. Yes, sir.

Q. Are there two drums there?

A. Yes, sir.

Q. A great deal of fall around that drum, and there would have been some interference with that other drum in coming back over and winding it around the drum?

A. Yes, sir; it would let the topping-lift cable drag on your lower drum cable.

Q. And in doing that you were trying to cut the cable—when [illegible] and you cut that cable you tried to cut it to the length it seemed to you, at that time best, taking the size of the drum and being in contact with that topping lift, you cut the cable at the [illegible] you thought it would be better cut?

A. Yes, sir.

Examination by Mr. KILBORN:

Q. Did you have any discussion with Knudsen at the time he was cutting it?

A. Yes, sir; I told him it was too short at the time he cut it and he lengthened out on it and put more on it.

Q. He put more on it?

A. Yes, sir.

Q. What did you say to him then?

A. I didn't have nothing to say to him, because I wasn't cutting the cable.

Examination by Mr. GRESHAM:

Q. You thought it was all right after he lengthened it out; it seemed to you about right then?

A. As far as that cable cutting is concerned, that wasn't under my charge at all. I was running the engine.

Q. You were running the engine?

A. Yes, sir.

(This witness was thereupon excused, and the hearing of testimony was recessed for lunch, to be resumed at 2 o'clock p. m.)

NOTE.—The hearing was reconvened at two o'clock p. m., November 22nd, 1928.

226 Mr. KILBORN. If the court please, I had a couple questions that I would like to ask Captain Knudsen on cross-examination, that I overlooked.

DEPUTY COMMISSIONER. Mr. Knudsen recalled.

Captain JOE B. KNUDSEN, on being recalled by Mr. Kilborn, testified as follows:

Examination continued by Mr. KILBORN:

Q. Mr. Knudsen, in raising of the Roberts' barge, did you first take the cabin off?

A. We did; yes, sir.

Q. How much time was consumed in fastening onto and raising the cabin off of it?

A. That did not take so much time.

Q. About how long; about how many days?

A. It was not a day.

Q. It was not a whole day?

A. No, sir.

Q. How much time was consumed in taking the engine off?

A. We took the cabin off in a couple lifts, and the engine, I took the boiler with one lift and the engine with the other lift.

Q. How many days in all were consumed in lifting the cabin and the engine?

A. We spent one day there, fooling around with them, just about one day.

Q. How many days were you laying there, getting your wires onto the barge itself; that is, Captain Roberts' barge, and in lifting that barge?

A. It was a small barge.

Q. I mean, derrick.

A. I just fastened a wire around the barge, two wires, one wire went around from the stern and one from the back, and we did
227 it all in one day. I was there, myself, early in the morning before the others came, and that was the day we raised it.

Q. Weren't you there, really, as Mr. Smith says, quite a number of days prior to doing that work and doing it?

A. The way that came in, when we came in there to the end of the dock we laid there fixing up different things and fixing rigging onto the new fall and one thing and another. Then they called us off to Harrison Brothers' boat. Then we went down there and then we towed back up into the slip again. Then we fooled around there to get ready. By the time we got ready to do some work they then came for us again. That is what took the time—coming and going to do other work.

Q. How many days did you consume in this Roberts job, preparing for it and doing it?

A. The actual time was about two days, doing that work.

Q. You lost some time preparing for the job, didn't you?

A. That is what I mean—preparing to do it—they took us away from the job and we went back again when we had nothing else to do.

Q. About the Harrison job; you did not know anything about that until after you had gotten rigged for the raising of Roberts' barge?

A. Yes; the Harrison job came on unexpectedly. I knew about the Harrison job just as I went to the Southern slip; I believe, a few days before we got there.

Q. Who paid Mr. Smith, the engineer for his work on the days you were working on the Roberts job?

A. I did not pay him anything at all. I had one man and I paid him myself.

Q. What other help did you have besides the engineer?

A. Just only one man, I think.

Q. But you never loaned Mr. Benson any money for what he paid him, did you?

A. No; I did not loan him anything. I just put in a week's work for me, work and expense for six days, to pay for that.

Q. You paid him nothing for the engineer?

A. No, sir.

Q. You did not have any money with which to pay him, did you?

A. Well, it was not in question for me to pay him.

Q. Have you any property?

A. No, sir.

Q. Nothing whatever?

A. No, sir; I have got no property.

Q. No money and no income from any source?

A. No.

Q. You testified that you came down here from the marine hospital this morning.

A. Yes, sir.

Q. You are able to walk without much effort, and get around?

A. If I do not walk too much, I can take my time and walk from here to the hospital.

Q. Did you walk from here to the hospital this morning?

A. Oh, by taking my time.

Q. Haven't you been walking around a good deal?

A. No, sir. I have got to lay-up if I walk much, as I am so sore the next day that I have to lay-up.

Q. You are able to get around and do some kind of work now, aren't you?

A. I do not see how I could unless I set down and used my hands. I will never be able to stand to do work and walk around—to do that kind of work—in the condition I am in.

Q. Do you expect to walk back to the hospital this afternoon?

A. I think I am going on the car. I do not think I will be able to walk, and I will get on the car, because I have been fooling around here all day and I have pains in both places now.

220 Q. The injuries you sustained are altogether in your right leg?

A. Yes, sir.

Q. Your body and your left leg has not been effected at all?

A. No; the left leg was not [illegible].

Q. Your body is all right, there is nothing wrong with you there?

A. No, sir.

Q. It is simply confined to your right leg?

A. Yes, sir; and the doctor says it will never be any better than it is now.

Examination by Mr. GRESHAM:

Q. You walked down from the marine hospital this morning because you didn't have any funds and you wanted to be in court here to-day?

A. Yes, sir; that is why. If I had carfare I would have went on the car, but I just had it to do.

Q. Did Mr. Benson ever call on you for any money for the use of that barge, with reference to the "Apollo"?

A. Not the "Apollo."

Q. Captain Roberts' barge?

A. Yes, sir.

Q. Now, this derrick barge "Chickasaw," did you see that barge yesterday?

A. Yes, sir.

Q. Tell his honor how that is rigged?

A. I managed to go to the docks yesterday, to the Alabama plant, who are using that barge.

Q. Who are the Alabama people?

A. The Alabama Dry Dock people.

Q. Are they one of the largest dry dock people on the Gulf coast?

A. Yes, sir.

Q. And they were using that barge?

A. Yes. I got one of the engineers and talked to him and asked him if he was operating on this barge, and he said yes——

230 Mr. KILBORN. I object to any conversation between the engineer and Mr. Knudsen, on the ground that it is hearsay; on the further ground that the barge is no longer the property of Mr. Benson; and further that nothing that Alabama company is doing with the barge now shade on the issues in this case.

Mr. PILLANS. If your honor please, we do not want to bring that conversation in at all. We expect to show this—that the barge is now rigged exactly as Mr. Knudsen had it rigged.

Mr. KILBORN. I still renew my objection and I contend that that does not throw any light on the issues in this case at all.

DEPUTY COMMISSIONER. They are going to show that this barge at the Alabama company is equipped in the same way as the barge was equipped when he got here on it; is that the idea?

Mr. GRESHAM. Yes, sir; that is the same barge—and we want to show that it is now rigged for heavy work, at one of the largest ship repairing yards on the Gulf, and that it is rigged as Captain Knudsen had it.

The DEPUTY COMMISSIONER. That is all right; but any conversation on this subject is irrelevant.

Mr. KILBORN. I except to your honor's ruling.

Q. Tell his honor how it was rigged?

A. She was roved into three sheaves—standing part is made fast to the boom block, or lower block. That makes seven parts. That is the way I had it.

Mr. KILBORN. I move to exclude that testimony as irrelevant, incompetent, and immaterial, and upon the further ground that it does not throw any light on the issues in this case.

The DEPUTY COMMISSIONER. Objection overruled.

231 Mr. KILBORN. I except to your honor's ruling.

Q. What sort of work was the derrick "Chickasaw" doing at the Alabama Dry Docks Company?

A. It was doing ships work, marine work. It had a ship's propeller—she had a ship's shaft, a shaft that connects from the main engine to the propeller, raised up in the air on one end, and they had the propeller lying on the wharf, and were trying to fit the end of that shaft into the propeller.

Q. Is that heavy work or light work?

A. That is very heavy work.

Q. Now, I want to ask you this: I do not know whether the record shows it clearly, but I want to ask it again; when you got through

rigging that derrick boom with that new wire; when the derrick was straight up in an upright position where was the lower block?

A. It was about that high [indicating] from the deck.

Q. About three and a half feet?

A. Yes, sir; that high from the deck.

Q. Now, how does the lower block make connection with the thing that the derrick is to lift?

A. As a rule they have got two slings, a chain sling, which connects on to that bottom block, and that chain sling is a wire, a wire sling, whatever you chose to use, and you connect that on to what you are going to lift.

Q. How long is that chain?

A. It all depends on what you want to use, and is from ten, twelve, to twenty feet, depending on what you are lifting and how far away it is.

Q. With the derrick in that position, straight up, and the block three and a half feet from the deck, how was the wire with reference to the drum, the other end of it?

A. How much wire I had on the drum?

Q. Yes. Did you have any turns around the drum?

282 A. I had three turns around the drum.

Q. With the derrick rigged in that fashion, would you be able to lift anything out of a ship or from the ship to the wharf?

A. Yes; I would. When you go alongside of a ship with any kind of a weight, say this [indicating] is the boom, you have to move that boom over like that [indicating].

Q. That is an angle of about what?

A. About thirty-five degrees, I presume, or forty-five, I reckon.

Q. Forty-five degrees from the horizontal?

A. Yes; in that shape [indicating] to get the block over the hatch of the ship, the fall, you know, over the hatch of the ship that you are going to lower down into, and when you do that, that throws that fall about fifteen feet more, maybe more——

Q. Below the level of the barge?

A. Below the level of the barge; yes, sir; having your boom down like that [indicating].

Q. Then you have got your chain about how long——

A. Then you *you* got your chain probably twenty or eighteen feet, something like that, whatever you choose——

Examination by Mr. KILBORN:

Q. You say you walked down to the docks yesterday?

A. I got on the car and went down.

Q. You had to walk how far after you got off the car?

A. I got a transfer, you know, on that other car, and that took me about two blocks of the docks.

Q. How did you get back?

A. I got back the same way. I walked about two blocks and I got on the car and came back up.

Q. Do you go down there right frequently to the docks?

233 A. That is my first time I have been there for a long, long time.

Q. On the day you got here you did not see Mr. Benson and talk to him, did you?

A. No, sir.

Q. You did not see him any time since the time that you have been hurt, have you?

A. No, sir; I did not see him.

Examination by Mr. GRESHAM:

Q. Have you ever seen Mr. Benson since the time you were hurt until you seen him in court here to-day?

A. No, sir; this is the first time I have seen Mr. Benson since I was hurt.

(The witness was thereupon excused.)

The DEPUTY COMMISSIONER. Mr. Knudsen, you say you have not seen Mr. Benson since you got hurt—have you been communicating with him by letter?

Mr. KNUDSEN. I got one letter from Mr. Benson.

Mr. GRESHAM. Did Mr. Benson ever call on you when you were out at the hospital since you got hurt?

Mr. KNUDSEN. No, sir.

FLOYD LENNIS, on being called as a witness by Mr. Kilborn, and being first duly sworn by the deputy commissioner, testified as follows:

Direct examination by Mr. KILBORN:

The DEPUTY COMMISSIONER. Where do you live?

234 A. Right at present in Mobile.

Mr. KILBORN. Do you remember the occasion when Mr. Knudsen here was hurt, on July the 4th, 1927, down on Mr. Charlie Benson's barge "Chickasaw"?

A. Yes, sir; I was there.

Q. Who were you working for at the time?

A. I was working for Captain Roberts.

Q. Captain Beauregard Roberts?

A. Yes.

Q. I will ask you whether or not, prior to the time that Mr. Knudsen was hurt on the day he was hurt, or within a short while before that, you saw Mr. Knudsen that day?

A. Yes, sir; he was on the barge working with us.

Q. I mean before that; did he come down to the tugboat where you were working?

A. Yes, sir; several times he came down there, three or four days before, or sometime before that.

Q. Just a short while before he was hurt?

A. Yes, sir.

Q. Was Captain Beauregard Roberts with him when he was down there on the tugboat?

A. Captain Roberts was on the boat; on the tugboat "Sister."

Q. That was Captain Roberts' boat?

A. Yes, sir.

Q. You and Captain Roberts were there and Mr. Knudsen came down?

A. Mr. Knudsen came down on the wharf.

Q. Right alongside the tugboat?

A. Yes, sir.

Q. Was there any conversation had between Mr. Knudsen and Captain Roberts in regard to Knudsen splicing a wire on Benson's derrick barge?

A. Captain Roberts had told Mr. Knudsen that he had to splice that wire for Mr. Benson, that he had to cut, because Mr. Benson had something for his barge to do.

235 Q. You say Captain Roberts told Mr. Knudsen that he had to splice that wire?

A. Yes, sir; and he said he had cut it. He said, "You have got to go over there and splice it."

Q. What did Knudsen say about that?

A. He said that he would.

Q. Then, on this morning when he got hurt, what happened? When did you first see Knudsen and where?

A. He was aboard the derrick when I got there.

Q. Aboard Mr. Benson's derrick barge?

A. Yes, sir.

Q. Where did you meet Captain Roberts that day?

A. That day, Captain Roberts, July the 4th, he came down to the tug "Sister" to get me and then we went down to Mr. Benson's job, and from there Captain Roberts and this young fellow that runs the engine——

Q. Jerry Woolsey, the engineer?

A. Yes, sir; went across from Mr. Benson's place over to the derrick barge.

Q. As I understand, you were on the tugboat "Sister," a boat that belonged to Captain Roberts?

A. Yes, sir.

Q. And Captain Roberts came to get you and you went on up to Mr. Benson's job, you and Jerry Woolsey, an engineer of Mr. Benson's?

A. Yes, sir.

Q. You went across the river?

A. Yes, sir.

Q. And when you got there did you find Joe Knudsen already there?

A. Yes, sir; he was already on the derrick barge when we got there.

Q. What did you do after you got there?

A. Right then we had some coal on the barge and we put that from the derrick barge over onto a little barge. Then I got monkey-

ing around there with some wires and things and had them fix them up.

Q. Who directed the movements of the job preparatory to splicing the wire?

236 A. Captain Roberts would tell me something to do and sometimes Mr. Joe Knudsen would tell me what to do.

Q. What was the engineer doing?

A. He was monkeying around there, fooling with his engine about that time.

Q. Did you see Mr. Knudsen when he got hurt?

A. Yes, sir; I was looking right at him.

Q. Tell the court how it happened.

A. Mr. Knudsen started to put some lines ashore, to make fast to things, and Captain Roberts told him, he said, "Joe, don't tie those lines or make those lines fast because they are not going to hold; they are all rotten." It looked like Mr. Knudsen never paid any attention to him at all but kept going ahead and working and made them fast to the wharf. I do not know what he made them fast to on the wharf, because I was not on the wharf and I did not see what place he made them fast. After he got everything ready, I was helping around there slacking off lines and things, and when he got ready to swing this barge around where he could put the boom on the dock so he could lower away to splice the cable, I got back from off the front of the barge and went by the main cabin in the back, because I knew something was going to happen.

Q. Could you see Knudsen from where you were standing?

A. Yes, sir.

Q. What happened then?

A. He told Jerry, the engineer, to boom over a little; I guess that is all he said, like that; and Jerry moved that boom possibly three or four feet—the boom—and he stopped, and just about the time he stopped the engine Mr. Knudsen hollered, "Stop her, stop her," but Jerry had the engine stopped already, and the weight of those blocks and chains on that thing, fastened on to that rope which was tied on to the other stringers on the wharf, pulled that whole stringer out and it came down like this [indicating] over on the barge and

237 hit the tow bitt on the barge, and in some way or another Mr. Joe got tangled up in the rope, and when it hit it throwed him and tripped him up.

Q. You say that the boy had already had the engine stopped and the weight of those heavy blocks and things swung it over?

A. Yes, sir; and pulled that stringer off. The engine was stopped.

Q. Who were you working for there on that day and at that time?

A. I was working for Captain Roberts.

Q. Did Mr. Benson employ you?

A. No, sir. I had not spoken to Mr. Benson in a long time.

Q. Did Captain Roberts pay you for your work?

A. Yes, sir. I had never worked for Mr. Benson, at any time.

Q. On this previous occasion, when you say Captain Roberts told Mr. Knudsen that he had promised to splice that wire, what did Knudsen say?

A. He said he would. I do not remember whether he said tomorrow, or what day he would do it, but that he would go over there and splice it.

Mr. KILBORN. That is all.

Mr. GRESHAM. No questions.

(The witness was thereupon excused.)

Mr. J. E. WOOLSEY, a witness called by Mr. Kilborn, on being first duly sworn by the deputy commissioner, testified as follows:

Direct examination by Mr. KILBORN:

The DEPUTY COMMISSIONER. Give the reporter your name and address.

The WITNESS. No. 1417 *Washington* Ave., Mobile, Alabama, Box No. 557.

238 Q. Your name is Jerry Woolsey?

A. Yes, sir.

Q. Do you remember the occasion on July the 4th, 1927, when Mr. Knudsen was hurt?

A. Yes, sir.

Q. Who were you working for at the time?

A. I was working for Mr. Charles Benson.

Q. Mr. Charles Benson; this gentleman here?

A. Yes, sir.

Q. In what capacity?

A. As engineer on a derrick barge.

Q. As engineer on the derrick barge "Chickasaw"?

A. Yes, sir.

Q. When did you first see Mr. Knudsen that morning?

A. When I left the ship I seen him over the river, on the barge.

Q. You saw him when you got across the river, on the barge?

A. Yes, sir.

Q. And that was the first time you had seen him that day?

A. Yes, sir.

Q. Who did you come across the river with?

A. With Captain Beauregard Roberts and Lennis.

Q. Mr. Lennis, the gentleman who just preceded you as a witness?

A. Yes, sir.

Q. Where did you go then?

A. To Mr. Benson's job.

Q. Did you hear any conversation between Mr. Benson and Captain Roberts that morning, in regard to what was to be done?

A. No, sir; only he told me the day before, he was going to splice——

Mr. PHILANS. I object to any conversation.

Mr. KILBORN. I withdraw the question.

Q. Anyhow, when you crossed the river with Mr. Beauregard Roberts and Mr. Lennis you found Mr. Knudsen already there?

A. Yes, sir.

Q. What did Mr. Knudsen say about it when you got on the derrick barge?

A. He wanted to turn the barge and lay the boom down, so he could reach the cable to splice it.

Q. What did you do?

A. I was busy oiling the engine and getting it ready to go.

Q. Oiling up the engine and getting steam up on that barge?

A. Yes, sir.

Q. Tell the court how Mr. Knudsen got hurt?

A. He wanted to turn the barge around on the end. He asked me to boom over to starboard, which I did.

Q. Who asked you to boom over to starboard?

A. Mr. Knudsen. And I boomed over to starboard and went back and continued oiling up my engine, and I seen Mr. Knudsen with a manilla rope, not exceeding one and a half inches in diameter, about one and a quarter to one and a half inches, and he was making that line fast to the wharf. I did not see what it was at the time, and making it fast onto the block on the main fall.

Q. How much do those blocks weigh?

A. I do not remember.

Q. You know approximately how much they weigh, don't you?

A. They are very heavy blocks, though.

Q. Can you give the court any idea what those blocks will weigh?

A. No, sir; but I judge around three or four hundred pounds.

Q. That is the block, without any tackle or stuff on it?

A. Yes, sir.

Q. What happened after he fastened onto the wharf?

A. He came back on the tug and flagged me to boom over a little to start the barge to swing around on the end, which I did. I boomed over not exceeding four feet.

Q. Fast or slow?

A. Slow, and stopped.

Q. Did he signal you to stop?

A. No, sir; not at that time, he did not, but I stopped, because I knew the weight of the block and all was going to have too much force to it, and I stopped, and the weight of the block swung the boom around and struck that piece of timber on the wharf and knocked it down, and it caught the tow bitt forward and the hull of the A frame.

Q. What happened then?

A. Mr. Knudsen, in some way, got tangled up in the rope, and he got his leg broken when that timber was pulled out from the dock and fell on the tow bitt.

Q. And that is the way he was hurt?

A. Yes, sir.

Q. Did you keep your engines going ahead after he signaled you to stop?

A. No, sir; I did not. I stopped them before he gave me the signal.

Q. And you say it was the weight of the tackle that swung that boom across there?

A. Yes, sir.

Cross-examination by Mr. GRESHAM:

Q. You worked on the derrick barge for the Baker Sand and Gravel Company, as engineer, also?

A. Yes, sir.

Q. That was the same barge that was sunk up the river a good while ago?

A. Yes, sir.

Q. Tell the court about what size barge that is.

A. The barge of Baker's?

Q. Yes.

241 Mr. KILBORN. Mr. Gresham, do you mean the barge of Mr. Baker or the barge of Mr. Benson?

Mr. GRESHAM. Baker's barge.

Q. Would that derrick barge weigh as much as seventy five or a hundred tons?

A. No, sir; not that large, that barge would not.

Q. How much would it weigh?

A. The boom on it would not stand that. It would not stand fifteen tons. Just a straight cypress boom, that barge of Baker's was.

Mr. PILLANS. No; he is asking you about the weight of Baker's barge; how much would it weigh?

The WITNESS. I do not know.

Mr. GRESHAM. How much would it weigh, how much would the whole thing weigh, do you think?

A. I could not say.

Q. Did Mr. Benson ever have that fall spliced after Mr. Knudsen was hurt?

A. Yes, sir; it was spliced.

Q. That same day?

A. No, sir.

Q. A day or two later?

A. Yes, sir.

Q. Who did that work?

A. A man by the name of Mike. I do not know his last name.

Q. Is that gentleman out here to-day?

A. No, sir.

Q. Mr. Swigary?

A. No, sir.

Mr. GRESHAM. That is all.

(The witness was thereupon excused.)

242 Mr. CHARLES BENSON, a witness called by Mr. Kilborn, on being first duly sworn by the deputy commissioner, testified as follows:

Examination by Mr. KILBORN:

The DEPUTY COMMISSIONER. Give the reporter your name and address.

A. Charles Benson, 1101 Savannah Street, Mobile, Alabama.

The DEPUTY COMMISSIONER. You are the defendant in this case?

A. Yes, sir.

The DEPUTY COMMISSIONER. What connection has this Benson Sheet Iron and Metal Works got to do with you? Is that a fictitious name, or partnership, or corporation, or what is it?

A. I own the place; I am the proprietor of the place.

The DEPUTY COMMISSIONER. You are the sole proprietor and operator, under that name?

A. Yes, sir.

(NOTE.—The examination was thereupon continued by Mr. Kilborn.)

Q. You say you did business under the name of the Benson Sheet Iron and Metal Works?

A. Yes, sir.

Q. Anybody interested in it with you?

A. No, sir.

Q. You owned this derrick barge "Chickasaw" we have been talking about?

A. Yes, sir.

Q. That was your individual property?

A. Yes, sir.

Q. What has been your line of business all of your life?

243 A. Sheet iron and copper work.

Q. Ship worker?

A. Coppersmith by trade.

Q. You worked up from the ranks as a sheet iron worker?

A. Yes, sir.

Q. And as blacksmith?

A. Sheet-iron, copper worker; that is a little different from blacksmithing.

Q. I mean you have worked as a laborer in that line of work; worked yourself up until you became proprietor of this little shop?

A. Yes, sir.

Q. You have done this line of work all of your life?

A. Yes, sir.

Q. Have you worked around these derrick barges and things like that yourself?

A. No; very little.

Q. How long did you own this derrick barge "Chickasaw"?

A. About three or four months.

Q. You bought her from the Chickasaw Ship Building and [illegible] Company?

A. Yes, sir; or the Tennessee Coal and Iron Company it was.

Q. She was up there at the Chickasaw Company's plant, up here above Mobile somewhere?

A. Yes, sir.

Q. Did Mr. Knudsen work for you on that barge?

A. Yes, sir.

Q. In what capacity?

A. Well, he was a rigger and deck hand.

Q. What kind of work was that barge doing up at Chickasaw?

A. When they built Chickasaw they had this barge, this dredge boat, up there doing dredging work; and when they built the embankment around that place, they left an embankment about fifteen or twenty feet high, and when I bought the dredge "Chickasaw" I had to dig out of that embankment to get it out into Chickasaw Creek.

Q. In other words, she dug herself out, really?

A. Yes, sir.

Q. And you had Mr. Knudsen working on her while that was going on?

A. Yes, sir; that is, the latter part of it he was on there. The first part of it he was not, but the latter part Joe was on there.

Q. Mr. Knudsen was on there as a rigger and deck hand at that time?

A. Yes, sir.

Q. He was a general handy man on the boat?

A. Yes, sir.

Q. Do you know Captain Beauregard Roberts?

A. Yes, sir. I have known Captain Roberts a long time.

Q. How about Mr. Knudsen; did you know him?

A. I have known Joe about fifteen years.

Q. Were you friendly with him?

A. Yes, sir.

Q. Did Captain Beauregard Roberts have a derrick barge?

A. Yes, sir.

Q. When your boat was up at Chickasaw, where was Captain Beauregard Roberts' barge?

A. I saw Captain Roberts' barge over there a few days before it was sunk. I was over there with Mr. Pillans' father, and Mr. Pillans remarked about the condition of the barge at that time and he said he could not understand what kept the boat from sinking.

Q. That was this Mr. Pillans, here?

A. No; his father. Mr. Pillans and I both looked at it, and he laughed and said he could not see what kept the boat afloat. When he came out, I told Luster Bodden he had better have that barge moved—or you are going to have another one at the bottom of

245 the slip. They already had the "Apollo" sunk in the slip. And sure enough, a few days after that, a northerner came up and sunk his barge.

Q. Did you have any connection with Captain Roberts in the ownership of that boat?

A. No, sir. His boat sunk in such a place that it was impossible to operate into that slip from the river, with the barge sunk like she was.

Q. Did Captain Roberts and Mr. Knudsen ask about using your derrick barge, so that he could raise his sunken barge?

A. Captain Roberts never said anything to me about it at first, but Joe talked to me and he said that they had Captain Roberts worried almost to death about it, as he had that slip bottled up with his sunken barge, and that they were talking about all kinds of damage, which he was going to be responsible for, and that he did not know what he was going to do about it.

Q. You say Joe, you mean Mr. Knudsen, the claimant?

A. Yes, sir.

Q. You say Joe spoke to you and told you that Captain Roberts was worried?

A. Yes, sir. The last time I went up there, went up to that fill to that derrick barge, she was afloat——

Q. That is up to Chickasaw?

A. Yes, sir; and Mr. McArdle, who is with the Tennessee Coal and Iron Company——

Q. First, I will ask you before you go ahead with your explanation—what connection had Mr. Knudsen with the sinking of Captain Roberts' barge over there?

A. Well, Joe was using Captain Roberts' barge to raise the old "Apollo" that was sunk over there.

Q. Did Mr. Knudsen have a ship of his own to work on the "Apollo"?

A. He had a contract to raise her.

Q. You had no connection with Mr. Knudsen in that contract?

A. No, sir.

Q. You had no interest in it whatever?

246 A. No, sir.

Q. That was a contract Mr. Knudsen had of his own for the raising of the "Apollo"?

A. Yes, sir. They were working it together, he and Captain Roberts, I understand.

Q. You understand he and Captain Roberts had that contract between them?

A. Yes, sir; and Joe was to do the work.

Q. And it was while Joe was using Captain Roberts's barge on the "Apollo" job that she sunk?

Q. They had to use it in raising Captain Roberts' dredge?

A. Yes, sir. They could not raise it any other way, because the dredge was rigged just like the barge that went down. They had to put it on there; otherwise they could not rig it otherwise.

Q. Did you ever tell him how many sheaves to rig the block for when he went to rig it?

A. I told him that we had operated the barge with seven sheave blocks, and I told him that I wanted it rigged with four sheave blocks to go twenty feet under the water, which would allow you to go down in a ship and pick up anything.

Q. Why did you tell him to rig it four sheaves instead of three?

A. Because the work that he was going to do was very heavy work and was really more than a four-sheave rig was capable of handling safely. The safe working strain is eight tons.

Q. If it is rigged with two sheaves or three sheaves, is the strain on the cable greater than if it is rigged with four sheaves?

A. Greater, because you have got another turn on it.

Q. A great deal greater?

A. Yes, sir.

Q. You told him how you wanted him to rig it, and that you wanted it rigged with four sheaves?

A. Yes, sir; and that we had enough wire left on there to rig four sheaves twenty feet, which would allow the block to go twenty feet below the surface of the water. That is why I bought three thousand feet of wire at that time. You see, if I had wanted it rigged three sheaves I would not have had to have bought three thousand feet of wire.

Q. How did Mr. Knudsen rig it, and how did he cut it.

250. A. When they brought the dredge down to the Southern dry dock, they just cut it in two; that is all they done, right about the middle. They put about nine hundred feet on there, after I had told them that I did not want my cable cut, for I did not think that the cable would be safe to use with a splice in it, as it would not be smooth enough to reave properly, and I told him, "Do not cut my cable." Knudsen said that there would be too much on it for the drum to go around the drum. After Joe had cut it I saw him, and I told him that he did not have enough left on there for a four-sheave block, and he said, "Yes; I have"; and I told him, "No; you have not; you have not got enough on there for a three-sheave block." They testified that they rigged it with a three-sheave block, but it was not. They rigged it two sheaves for a two-sheave block.

Q. What did he have to say about it when you told him that he had wrongfully cut your wire?

A. Well, he said, "You have enough left for a four-sheave block and to go twenty feet under the water with it rigged that way," and I told him I did not have.

Q. Was there anything said about splicing it?

A. No; not at that time. He said he could splice it, but he never did. He said he could, but he never did splice it.

Q. Now, when your derrick barge got down to the Southern dry dock, there on the job of raising Captain Roberts' derrick barge, did you get a job at that time from Harrison Brothers?

A. No, sir.

Q. When did you get the Harrison job?

A. Harrison sent—Harrison came down to my shop and I was not there. When he came he said to me, "I seen your derrick barge down at the Southern dry dock raising that barge of Captain Roberts'," and I said, "Yes; I have loaned it to Captain Roberts to raise his derrick," and he says, "I have got that barge that
251 sank right at our ways, the Harrison Brothers ways." And he said that it was in the way of his ways and he would like for me to come down and raise it, and I says, when you get ready to have it done, tell Joe and he will come down and raise it for you. The next day John Harrison came down there again, and he says, "How about getting that derrick to-morrow." I says, go and tell Joe Knudsen and he will bring it down and raise that for you. So we raised the barge the next day. That was several days after they got down to the Southern dry docks.

Q. How many days did Knudsen and Roberts have your derrick barge, using it for their own purposes?

A. They had it there, altogether, eleven days. We had it one day for the Harrison job and two days on the job for the Baker Sand and Gravel Company.

Q. How about the Radcliff job? Tell his honor about the Radcliff job.

A. That day I was going over the river, which was the last day Joe was over there. I went over there to the Southern dry docks and there was nobody but Knudsen on the job. I says, "Joe, what is the matter? Haven't you got anybody to help you here?" and he says, "Sure, we have a couple of men to help us." So I got ready to go back across the river, as Captain Roberts was not there. Jim Campbell, a ship carpenter, was there, and I says, "Have you seen Captain Roberts?" He says, "I think he will be here directly." He says, "I think he will be back in about five minutes." I said to Jim, after I had waited there for thirty-five minutes, to tell Captain Roberts that I came over there to see him, and to tell him that I wanted the barge to stay over there after he got through as I wanted to have her caulked. The boat has been there for ten days at that time and they had not done anything but to take the house and boiler off of her. Next morning, about eight o'clock, I went and got a launch and went back there, and when I got back over there Captain Roberts and Joe and a couple men were there working with him.

Q. Working there raising Captain Roberts' barge?

252 A. Yes, sir; getting ready, getting lines around her, and getting things ready. And so I said to Captain Roberts that Herndon Radcliff had told me he had two tanks he wanted to lift overboard out of a gravel barge, which he wanted to use to clean gravel in. Herndon had told me that morning that any time I didn't have anything for my boat to do that he would send one of his tugs for my derrick so that I could lift those two tanks overboard for him, and I said I would be glad to do it. So I said to Joe, when I was over there, I says, "Joe, Herndon Radcliff will want a couple tanks lifted overboard and we will leave it there when we get back," but I said, "Joe, whatever you do don't move this barge away from here until I tell you." That is what I wanted to do. The barge had been leaking badly and came very near sinking right before that, and Smith, he had to go overboard and nail some batten over the leaky places in order to stop the leaks enough to put the barge in the Southern dry dock, and she was badly in need of caulking.

Q. What I want to get at is this: During this time that Knudsen had the barge over there how many days did he devote to your work and how many days to his work of raising Captain Roberts' barge?

A. He devoted two days to Captain Baker's work and he devoted one day to Harrison's work; that is three days from the total number of days he had the derrick barge there.

Q. He had it eleven days and eight days of it was devoted to his own use?

A. Yes, sir; because when he took the barge he did not use it only to lift the barge with, but he used it to carry the cabin or the house off of the barge with and to get the boiler and the engine out of the sunken barge, and he did all of that while he had the derrick there.

Q. Now, did you ever receive any compensation, in any form, from Captain Roberts or Knudsen for the use of your derrick boat?

A. No, sir; none whatever. I did not expect any.

253 Q. You just let them have it out of friendship for them?

A. Yes, sir.

Q. What is the value of the use of your dredge barge per day?

A. The minimum charge would be $75.00 a day—anywhere from $75.00 to $150.00 a day.

Q. A minimum charge of $75.00 a day?

A. Yes, sir.

Q. Now, during the time that Knudsen was employed on the barge and had it over there on the Roberts job, who paid the engineer?

A. I did.

Q. How much?

A. I paid him $30.00 for his week's work.

Q. You paid him so much a month?

A. I paid him by the week; $30.00 a week.

Q. Did Knudsen or Roberts ever refund you any part of the engineer's wages?

A. Knudsen told Smith he was his employee, and Smith told Knudsen he would rather have me pay him and just to make it all right with me. I never said anything to them, but I went on and paid it to Smith, and paid Knudsen, too, while he was working on his work.

Q. Paid both of them while he was using your barge for his purposes?

A. I paid him because he was right hard up, and I also paid him out of my own pocket, and there is the check to show it.

Q. About splicing this wire: Under what circumstances did Knudsen come over there the day he was hurt to splice the wire?

A. I rang up Captain Roberts at the city docks. Mr. Bell went and called him to the city docks, and I told Captain Roberts to come down to the job, and he came down and I asked him, "What are you going to do about my wire?" He started arguing a little about the wire and he told me he thought possibly that——

254 Mr. GRESHAM. I do not think that the conversation between the witness and Captain Roberts is relevant to the issues in this case, and I think it is purely heresay. Captain Roberts is not a party to this suit and has nothing to do with it.

Mr. KILBORN. My contention is that this wire was to be spliced by Mr. Knudsen, under directions from Captain Roberts, and that we never employed Mr. Knudsen to do the splicing at all. We expect to show by Mr. Benson that he got in behind Captain Roberts about it and that Mr. Roberts got Mr. Knudsen to do this work, and I think that is admissible.

Mr. GRESHAM. If your honor please, I do not agree to the gentleman's contention. Captain Roberts is not a defendant in this suit. He is not a party to this record, and what Captain Roberts told Mr. Benson, and what Mr. Benson told Captain Roberts, is purely heresay to the issues in this case.

Mr. KILBORN. It is in contradiction to the witness's story as he told it from the witness stand.

The DEPUTY COMMISSIONER. I think the proposition would be relevant if Mr. Knudsen was claiming that he made a contract with Benson. Benson claims he did not make any agreement at all with Knudsen; that he made some agreement with some other party, and I will allow that conversation in to show what that agreement with the other party was. I overrule the objection.

Mr. PILLANS. But this part was that Mr. Kilborn asked Mr. Benson to state the conversation or agreement that he had with Captain Roberts. That is the part I am objecting to. Captain Roberts is not a party to this suit.

Mr. KILBORN. That is only a part of the proving of this point. I can not prove it all at one time.

255 Mr. GRESHAM. Ask what the contract was between them. I think the conversation between Captain Roberts and Mr. Benson is heresay and irrelevant to the issues in this particular suit.

The COMMISSIONER. Of course, any conversation between Roberts and Benson would not be binding upon Knudsen, and is hearsay, and hearsay is admissible before this court, and I will let it in for what it is worth.

Q. All right; go ahead now.

A. How is that?

Q. You said you called up Captain Roberts.

A. I phoned Captain Roberts to come to my job, which he did. I asked him what he was going to do about my wire. He contended that it was a safe proposition to splice it. I had talked to Swigary and different people about splicing wire cable of this kind, where it goes through a sheave and a block, and they stated that the wire is liable to wear at that point where it is spliced, due to the fact that that portion of the cable is larger than the balance, and that it is a dangerous proposition to splice cable, where it goes through a sheave and block. It is all right on a straight pull. He said he had pieces of wire which had been in use for five years which had been spliced and that he considered it safe to splice it like that. Well, one word brought on another, so I agreed to it. I said, "Who are you going to get to splice the wire." He told me he was going to get this Jamaican negro on the wharf. He said he did a lot of splicing around here. Next he told me, he says, "Joe is coming back from Pensacola to-day, and maybe I can get him to go over there to-morrow, or maybe I can get him to make the splice in that wire. That was all there was to it. Next morning when Captain Roberts came in the shop—I did not see Knudsen—he told me Knudsen had left Canal Street and went over the river to the boat. That is the last I seen of him.

Q. Did you ask him to get Knudsen, or did Roberts say he would get Knudsen?

256 A. No; I put it to him to get the wire spliced.

Q. You put it up to Roberts to get that wire spliced?

A. Yes, sir. I did not know Knudsen in it at all.

Q. Did you give Roberts to understand you held him responsible for what had happened to your wire?

A. I told him what I expected him to do and I asked him what he was going to do about it.

Mr. GRESHAM. I object to that as inadmissible.

Mr. KILBORN. I withdraw the question.

Q. Did you ever request Captain Roberts or anybody else to get in touch with Joe Knudsen and have him make that splice for you?

A. No, sir; I never did.

Q. Did you have a conversation at that time or about the time of July the 1st, or shortly prior thereto, with Joe Knudsen, in which you asked Knudsen to splice that wire?

A. No, sir.

Q. You say he told you he was going to get Knudsen?

A. Yes, sir.

Q. And splice that?

A. That was the third of July. He said he was going to take Joe over there the next morning and make him splice that wire.

Q. Did you tell Captain Roberts that you would pay for the splicing of the wire?

A. No, sir. What I ought to have done was to have made him pay me for the wire.

Q. Did you tell Knudsen you would pay him for splicing the wire?

A. No, sir. I never seen Knudsen, and never spoke to him since he left the boat, about June 11th or 12th.

Q. When did Knudsen cease to work for you?

257 A. About June the 11th, I think. I have got a memorandum there. You can see it there. It is according to my pay roll.

Q. Is that what your pay roll shows?

A. Yes, sir.

Q. When Knudsen was working for you, up to June the 11th, what did you pay him?

A. Five dollars a day.

Q. At the time of this accident, were you carrying any insurance under the United States longshoremen and harbor workers act, to provide compensation to anyone who might be injured?

A. No, sir.

Q. Had no insurance whatever?

A. No, sir.

Q. Did you know anything about any such act being in existence at that time?

Mr. GRESHAM. I object to that. He is wandering far afield, in asking as to whether the gentleman knew anything about a law which he is supposed or presumed to know.

Mr. KILBORN. I withdraw the question.

The DEPUTY COMMISSIONER. Do you carry insurance now?

A. I have nobody working for me, at all.

The DEPUTY COMMISSIONER. Have you had anybody working for you since July the 1st, 1928?

A. No, sir; not after you got me up in court there, that day, I have had nobody working for me at all.

Mr. KILBORN. You mean, after this suit was brought—you mean the time the judge here, came down to the courthouse, where you were serving as a juror and called you out and talked to you about this insurance proposition?

A. Yes, sir.

Mr. KILBORN. And called you outside and told you of the necessity of having insurance?

A. Yes, sir.

258 The DEPUTY COMMISSIONER. That was a long time afterwards, when I saw you over there at the courthouse and advised you in regard to this insurance; that was a long time after July the 1st, 1928?

A. Yes, sir; that was a long time after that.

The DEPUTY COMMISSIONER. You say you have not had any employees since that time I saw you in the courthouse, over there?

A. No, sir.

The DEPUTY COMMISSIONER. How about the time prior to that time and after July the 1st, 1928?

A. I have been doing very little work, mighty little, just what I do myself, that is all; no mechanics employed at all.

Mr. KILBORN. You mean you do the labor?

A. Yes, sir; just a little shop around there.

Q. Put on your overalls and get a hammer and do the work yourself?

A. Yes, sir.

Q. You just operate a small shop?

A. Yes, sir.

Q. This block with these sheaves in it, these rollers in it, that hangs over the lift, approximately what will that weigh?

A. It will weigh about three hundred and fifty to four hundred pounds. They are very heavy blocks, they are four-sheave blocks. I had two six-sheaves, but I did not use them. I did not put them on.

Q. They will weigh how much?

A. Three hundred and fifty to four hundred pounds.

Q. In rigging up a four-sheave block, how much will your derrick barge lift?

A. Fifty tons.

Q. How much will it lift with three sheaves?

A. Well, you could lift fifty tons with three sheaves.

259 Q. But what was the advantage of rigging four sheaves over three sheaves? In other words, what is the advantage of rigging four sheaves as against three sheaves?

A. If you have got heavy work to do, heavy lifting, and you put a four-sheave in, it will releave the strain on the wire and relieve the strain all around; less strain on the engine. You take a piece of wire, a seven-eighth inch cable, and you can lift about twenty tons with four sheaves, for that will give you a working load of eight tons.

Q. Are you familiar with stresses and strains on wire cable used in the manner this was?

A. Yes, sir.

Q. Was Mr. Knudsen employed by you in any capacity whatever at the time he was injured?

A. No, sir.

Q. Had he been since June the 11th, 1927?

A. No, sir; he had had not.

Q. I believe you stated you did not expect to pay him for what he was doing on July the 4th.

A. I had nothing in the world to do with Joe Knudsen when Joe Knudsen got hurt. Captain Roberts telephone me at the shop and he says, "Charlie, I had an accident over there." He says, "Joe got his leg broke." I says, "Captain, I am sorry he got hurt." He says, "Will you come right down there?" I says, "Captain, I have

no interest in Joe Knudsen whatever." I was not interested in him, whether he broke his leg or not. I told him I was sorry that he broke his leg, but I had no interest in Joe Knudsen.

The DEPUTY COMMISSIONER. Did you know that Joe Knudsen was working on the barge at the time?

A. I knew he was, by heresay. I knew Captain Roberts was going to take him over there. Captain Roberts told me he was going to take him over there and get him to splice the wire, because it
260 takes a pretty good man to make a splice of that kind, and it takes a man who knows the splicing business from bottom to top, for you have to tuck in the ends about eight inches, and you have to know your business to keep down the size of the cable where it is spliced.

The DEPUTY COMMISSIONER. When did you say you had this conversation with Captain Roberts, in which Captain Roberts said he would get Knudsen to go over there and fix that wire?

A. About two days before he went. He went over there on the Fourth of July, and about the second of July Captain Roberts told me he was going to have him do the work.

Cross-examination by Mr. GRESHAM:

Q. How much did you get for raising the Baker barge?

A. $150.00.

Q. How much did you get for the Harrison job?

A. $75.00.

Q. How much did you get from Herndon Radcliff?

A. $25.00.

Q. What did you do with the barge after Mr. Knudsen was hurt?

A. Well, the barge still stayed over there, and about a week afterwards I hired Mike Swigary to go over there and rig her. She had never been rigged up.

Q. What was done with her? Didn't you hire her out to the dry docks?

A. No, sir. Mr. Bell got married and went away and when he came back off of his honeymoon he got pneumonia and then they had to send him to North Carolina.

Q. For what purpose did you purchase this derrick barge?

A. Just to use it to do lifting with.

Q. For such things as raising sunken barges?

261 A. Yes, sir.

Q. I believe you testified that you bought that fall when the derrick barge was in Chickasaw?

A. Yes, sir.

Q. You bought it up there for the purpose of having a part of it used as a fall, didn't you?

A. Yes, sir.

Q. Do you mean to tell that that wire was rigged on that barge solely for the purpose of raising Captain Roberts's barge?

A. They had it on there for that purpose.

Q. You mean you did not have anything to do with that?

A. I had nothing to do with that wire cable in order to raise that barge, and Joe put it on the dredge and brought it down there for that purpose.

Q. Was it necessary to have that fall on there to raise the Harrison barge?

A. Yes, sir.

Q. And was it necessary to have that fall on there to raise the Baker barge?

A. Yes, sir.

Q. If Captain Roberts had not put that new fall on there, you would still have had to have had that new fall on there yourself?

A. Yes, sir; it would have to go on there.

Q. Do you know how many turns that drum would hold? Have you made a test of it, or do you know?

A. I know how many feet of wire you can get on there.

Q. How many?

A. You can get two thousand feet on that drum.

Q. And operate it regularly without any trouble?

A. Yes, sir.

Q. How many feet is on it now, do you know?

A. They have about two thousand feet on it, that is, including that which goes through the sheave.

Q. Where is it now? Have you sold it, or did you sell it?

262 A. It is at the Alabama.

Q. Have you sold it?

A. Yes, sir.

Q. And, as I understand it, you have had nobody working for you at all since July the 1st, 1928?

A. No, sir; I have got nobody, except off and on I have had a helper or something like that, but that is all.

The DEPUTY COMMISSIONER. And what were they doing?

A. Sir?

The DEPUTY COMMISSIONER. These helpers you say you had, what were they doing?

A. Helping braze and generally helping me around the shop and on the job.

The DEPUTY COMMISSIONER. Any of these jobs on any ships?

A. I had one job on a ship and I had about six or eight or ten men on there, the last two days on there. That was shortly afterwards. That was about three months ago or four months.

Mr. GRESHAM (continuing). When did you sell that barge?

A. I can tell by looking at that memorandum that Mr. Kilborn has got there.

Q. Would you mind looking at it and telling us?

Mr. KILBORN. I submit that would not be evidence in this case, when he sold it.

Mr. GRESHAM. This is cross-examination, and as I understand it, counsel has a wide latitude on cross-examination, and I propose to show the relevancy of that.

Mr. KILBORN. In what respect?

Mr. GRESHAM. You will see.

The DEPUTY COMMISSIONER. I overrule the objection.

Mr. KILBORN. And I except.

263 Mr. KILBORN. Is this the one you want [handing the witness a paper]?

The WITNESS. Yes; I want to see the last pay roll. I can tell about that. [The witness examined the paper.] No; I can not tell from that. It must have been the latter part of August or the early part of September.

Q. Of 1927?

A. Yes, sir.

Q. I believe you testified that that fall was spliced after Mr. Knudsen was hurt?

A. Yes, sir; I had Mike Swigary to splice it.

Q. And this fall that so much has been testified about; have you sold that or is it on there now?

A. I do not know. I have not seen it.

Q. You sold it to the Alabama Dry Dock and Ship Building Company?

A. Yes, sir.

Q. They are ship-repair men on one of the largest ship-repair companies on the Gulf coast?

A. Yes, sir.

Q. They use her for lifting heavy objects in their business?

A. Yes, sir.

Q. Now, the barge was at the Southern slip when you first saw her after the new cable was rigged?

A. No, sir.

Q. The first time you saw her after she was rigged, where was she?

A. I noticed the wire at Henderson's. You see, when they raised that barge that night—they raised that barge at eight o'clock at night. Captain Roberts had steam up on his boat. I reckon he thought he could get everything through at once, and he rang me up down at the foot of Palmetto Street, where Herndon had these two tanks——

Q. Well, after those tanks were landed where was the barge taken?

A. Over to Henderson's.

264 Q. And where was it taken from Henderson's?

A. It stayed at Henderson's two days and went to the Alabama lower docks on the other side of the river and was hauled out to be caulked.

Q. How long did it take to repair her?

A. Altogether about three weeks.

Q. And had the repairs been finished when Mr. Knudsen was hurt?

A. No, sir; Joe was working for me when that sunk. He had finished raising the "Apollo" up and had his barge tied alongside of the wharf. He was working for me at that time.

Q. He had left Captain Roberts' derrick barge over there?

A. Yes, sir.

Q. All right. Did you have any agreement with Captain Roberts or Mr. Knudsen that they were going to use your dredge barge "Chickasaw"?

A. No, sir. The day that Mr. Jim McArdle advised me to leave the fill alone, that was Saturday. That night I telephoned to Joe and was told he was over to Captain Roberts' house, and I got him on the phone and I asked was Joe there, and he said he was. I said, "You and Joe come down to the square as soon as you can, as I want to see you for a few minutes." He says, "What part of the square?" and I told him the south isle, that I would be up in the south isle in about five minutes, and in about another five minutes Captain Roberts and Joe came there. I said, Captain, Joe tells me you are greatly worried about your boat over there, and that you wanted to get my barge to raise her up. "Yes," he said, "Charley, they have certainly got me worried to death about this, and I would sure like to get your derrick barge to help me out on this proposition." I said, "I will tell you, Mr. McArdle advised me to take that boat off the fill, and that I am going to do it, and if you will move her off of there I will let you use my boat to raise your barge."

247 Q. At the time you were talking to Captain Roberts, was Mr. Knudsen present?

A. Yes, sir; both of them. All three of us were sitting on a bench in the square. I said, "Joe, how long will it take you to raise that boat?" He says, "Not very long." I saw him around here at the Battle House. The boom was put up and all; and I said, "Captain, go ahead and take her."

Q. Did you agree on any payment to you for the use of that barge?

A. No, sir; I just loaned it to him.

Q. As a friendly act?

A. Yes, sir.

Q. Then, after that, did Knudsen take that barge over there?

A. No; Roberts went up there and got her with his tug. He went up there Monday morning and towed her down there. That was Saturday night when I told him that, and Captain Roberts went up there Monday morning and towed my boat down to the Southern dry dock.

Q. And the Southern dry dock was the place where Captain Roberts' derrick was sunk?

A. Yes, sir.

Q. Now, in regard to this roll of cable, that we have been talking about in this case, what sort of cable was that?

A. A seventh-eighth inch plough wire.

Q. How many yards of cable was there in this roll?

A. Three thousand feet, before we cut it off for the topping lift. We cut off twelve hundred feet for the topping lift.

Q. Three thousand feet, originally, in this cable?

A. Yes, sir.

Q. And you cut off twelve hundred feet for the topping lift when you were at Chickasaw?

A. Yes, sir.

Q. And left the remaining eighteen hundred feet in the roll?

A. Yes, sir.

Q. What was the original cost of that three thousand feet of cable?

A. $537.00. I have the bill right here for it; three thousand feet, $537.00.

Q. When you permitted Mr. Knudsen and Captain Roberts to get your boat for the purpose of raising Captain Roberts' derrick, what, if anything, did you say to Mr. Knudsen about cutting the remainder of the cable left on the spool, that eighteen hundred feet?

A. I told Mr. Knudsen and Smith, both, that I wanted that cable left like it was, but they had broke the cable that goes around the bull wheel that swings the boom. They had broke that, and I told them that they could cut a piece off for the bull wheel, because we had about three hundred feet more of that than we needed for the boom block.

Q. How much was it that you took off for the bull wheel?

A. We took off about eighty-five feet for that.

Q. What did you say to them about cutting the remainder of it?

A. I did not want the remainder cut. I wanted it left exactly like it was.

Q. Did you tell them that?

A. That was understood.

Q. Did you tell Knudsen that?

A. That was understood, that I did not want that wire cut at all. I wanted to put it all on there. When I told Joe about that, he said it would be too much for the drum, etc., but I told him that was what I wanted done.

Q. When you told him you did not want it cut, he told you it would be too much for the drum?

A. Yes, sir; too much on the drum.

Q. What did you say to him about that?

A. I told him to leave the wire just like it was, and just cut off enough off the end of it for the bull wheel; that was all. You see, this wire was not on the dredge. This wire was sitting out on a lot of piling on a big spool near that dredge, and it was not found on the dredge boat, but when Joe brought the dredge down to raise Captain Roberts' dredge, he picked that up and put it on the dredge.

A. Yes, sir. The boat was then brought over on this side of the river after she was caulked and then moved around to the other side.

(The witness was thereupon excused.)

Mr. KILBORN. That is our case.

The DEPUTY COMMISSIONER. Any rebuttal?

Mr. GRESHAM. As I understand you, you want us to produce Dr. Hanaw. If you care to have him produced, I will try to get him.

The DEPUTY COMMISSIONER. What I said was he ought to be produced here in court; but if there was any reason why he should not be produced then we can go out to the hospital and take his testimony there, but I would prefer to have him here. We will recess until three-thirty (3:30) for Dr. Hanaw.

Dr. P. A. NEAL, a witness called in rebuttal by Mr. Gresham, on being first duly sworn by the deputy commissioner, testified as follows:

The DEPUTY COMMISSIONER. What is your business or profession?

Dr. NEAL. I am a physician of the United States Public Health Service.

The DEPUTY COMMISSIONER. From what institution did you graduate?

265 A. Vanderbilt University, Nashville, Tennessee.

The DEPUTY COMMISSIONER. What year?

A. 1927.

The DEPUTY COMMISSIONER. Are you licensed to practice medicine in the State of Alabama?

A. No, sir—I beg your pardon, I am not sure about that. I am in the regular service, and I do not know whether they allow us to practice here or not.

The DEPUTY COMMISSIONER. Did you have occasion to treat one J. B. Knudsen for an injury he sustained on July the fourth, 1927?

A. Yes, sir; I had him. I treated him from approximately August the 5th of this year up until the first of September.

The DEPUTY COMMISSIONER. Did you make a physical examination to find out what the injuries were?

A. Yes, sir.

The DEPUTY COMMISSIONER. When did you make that examination?

A. The first one I made was, I think, around the fifth of August.

The DEPUTY COMMISSIONER. What did you find on examination?

A. His heart and chest were approximately negative.

Mr. KILBORN. You mean by that, nothing wrong with them?

A. Best I remember; yes, sir; negative; nothing wrong with them.

The DEPUTY COMMISSIONER. What part of his body did you find something wrong with?

A. Right leg.

The DEPUTY COMMISSIONER. And what was the matter with his right leg?

A. Beginning with the right knee, was held in moderate flexation, deformity of approximately, best I could tell, 165 degrees.
266 His foot rotated externally—something like that—with fifteen to twenty degrees of motion; that is, in the right knee. The knee is partially ankylosed.

Mr. KILBORN. Are you looking at a report that you yourself made with somebody else?

A. I made this with Dr. Hanaw, both of us together. This is a report we made on the fifth of June, and we made another examination in August. Mr. Knudsen can tell you when it was.

The DEPUTY COMMISSIONER. Tell us all you found, with particular reference to his right leg.

A. Right knee quite tender to manipulation. The measurement of the right knee was 18⅛ inches; left knee 17¼ inches; 1¾ inches shortening on the right side. Some circulatory disturbance from arteriosclerosis; an old condition in the left foot present, with some deformity and the above circulatory disturbances; disability—this is the report of Dr. Hanaw, the specialist on physiotherapy and consulting specialist, at the hospital. That is where he figured out the disability on this man.

Mr. KILBORN. I object to the statement of what Dr. Hanaw figured out, because he is not present, and I would be deprived of any cross-examination of Dr. Hanaw.

The DEPUTY COMMISSIONER. Objection sustained.

Mr. GRESHAM. We except.

A (continued). The man who had been treating Mr. Knudsen, Dr. Hatfield, is off on vacation now, and it has been just since September that I attended him.

The DEPUTY COMMISSIONER. Were there any X rays taken of the right leg?

A. Yes, sir; numerous ones taken. Do you want a report on those?

267 The DEPUTY COMMISSIONER. Yes.

Mr. KILBORN. Mr. Gresham, the witness said something about a condition in his left foot. Do you contend that there was anything wrong with his left foot?

The DEPUTY COMMISSIONER. He testified his left foot was all right.

The DEPUTY COMMISSIONER. Have you got an X ray of his right femur?

A. Yes, sir. On August the 27th, 1927, here is a report on the X ray at that time. It is on the right knee and also third of the right femur. These films show the lower end of the femur in position, and the bone seems to have made very good repair. One small piece of bone is laying free, apparently under the patella, and may have to be removed.

The DEPUTY COMMISSIONER. Was that loose bone under the patella ever removed?

A. Just a minute and I will see. [The witness referring to report.] On October the 27th, 1927, incision over patella through a curved approach, supra and intra patella ligaments cut longitudinally, and capsule in same line over patella. Patella cut with hand saw and opened with a large penetcome. Wide attraction, with flexation of knee. Bone fragments removed, and area of callus obstruction cut away with chisel.

The DEPUTY COMMISSIONER. We are not so much interested in the treatment as we are as to what the condition was. Was this bone that you found a part of the patella that had broken off, or was it a part of the femur that was broken off?

A. This was October the 27th, 1927, and he has here—he does not state here whether that piece of the fragment was a piece of the fragment of the patella or not.

The DEPUTY COMMISSIONER. Did you find anything the matter with the femur? As I understand it, the femur is the big bone.

268 A. Yes, sir. The femur was the bone originally broken; then he had ankylosis of this joint, secondary.

The DEPUTY COMMISSIONER. He had a break of the right femur, did he?

A. Yes, sir.

The DEPUTY COMMISSIONER. What kind of a fracture? Doctor, I have before me a report which states: "Fracture, femur, right, supra-condylar, with posterior displacement and a vertical intra-condylar fracture also." What is supra-condylar?

A. Supra-condylar is the bony prominence that sticks out when the femur makes a curve like that [indicating]. You have got a curve like that, and that means the fracture was above the condylar.

The DEPUTY COMMISSIONER. Still it was a fracture of the femur, was it?

A. Yes, sir.

The DEPUTY COMMISSIONER. And not a fracture of the supra-condylar?

A. No, sir, the supra-condylar is just that proportion of the femur.

The DEPUTY COMMISSIONER. When was the last examination?

A. Do you mean from the standpoint of his knee alone?

The DEPUTY COMMISSIONER. Of his right knee and leg?

A. The last time here was on the 8th month 19th day, 1928. That is the last time I went over him. Of course, the doctor that has his ward now sees him each morning.

The DEPUTY COMMISSIONER. It states here there is a vertical intra-condylar fracture also. Was that also found by the X ray examination?

A. Here is the report on the X ray on July the Fourth, 1927.

Mr. KILBORN. I object to that report unless the doctor was present when it was made, or knows personally that it is accurate.

269 Mr. GRESHAM. Doctor, what you are reading from is a part of the permanent records of the United States Public Health Service at Mobile?

A. Yes, sir.

Mr. GRESHAM. You have those records in your hands now?

A. Yes, sir.

Mr. GRESHAM. And that is what you have been testifying to, and that is from what your statement is made?

A. Yes, sir.

Mr. KILBORN. Did you state that is a public record you are reading?

Mr. GRESHAM. I said a permanent record.

The WITNESS. May I make a statement?

The DEPUTY COMMISSIONER. Yes, sir.

The WITNESS. I have only been stationed at this hospital since July. They change us around frequently, and I do not think there is a single man in the service now that was there when this man came in, so I will have to take it from the records.

The DEPUTY COMMISSIONER. Those papers you have are the original record which you brought here from the hospital?

A. Yes, sir; these are the records of the hospital and this is a complete history of this man's case.

The DEPUTY COMMISSIONER. All right; read us what the X ray shows.

A. Intra-condylar fracture of the femur, with posterior displacement. The interval being rotated inward, the upper border of the patella appears somewhat impacted in the transverse line of fracture. The tibia and fibula are apparently impact.

The DEPUTY COMMISSIONER. Did you find any shortening of the leg?

A. Yes, sir; and on June the 5th they reported 1¾ inch shortening on the right side.

270 The DEPUTY COMMISSIONER. Now, doctor, taking what you found, and including the shortening of the leg, has there been, by reason of that, a total loss of use of that leg?

A. Not a total loss of use; no, sir; not in my opinion.

The DEPUTY COMMISSIONER. And is there a partial loss of use of the leg?

A. Yes, sir.

The DEPUTY COMMISSIONER. In your opinion, what is the proportion of that partial loss of use?

A. I think around between sixty or sixty-five per cent.

Mr. GRESHAM. That is permanent?

A. That is what this meant.

The DEPUTY COMMISSIONER. Is this condition permanent, the shortening of the right leg?

A. Yes, sir; that will be permanent.

The DEPUTY COMMISSIONER. That is permanent?

A. Permanent; yes, sir.

The DEPUTY COMMISSIONER. Is there anything about his right leg that won't be permanent?

A. I don't exactly get your question—you mean in the way of disability that will not be permanent?

The DEPUTY COMMISSIONER. I mean in the way of improvement.

A. The only chance for improvement would be, in my opinion, and I make this statement from the record of this man's case since he has been in the hospital and from my personal observation of him for the last fifteen or twenty days—would be that he might get some more flexation of his right knee, but I do not think it would be over five per cent.

The DEPUTY COMMISSIONER. When you say there is sixty-five per cent loss of the use of the leg, did you include that loss of flexation of the leg in addition to the shortening of the leg?

271 A. Yes, sir; the shortening is included, the contour of the leg is included, the function of his leg is also included; the function and contour of leg and the length of the leg, all of the disabilities that are present, are taken into consideration.

The DEPUTY COMMISSIONER. Is there anything to prevent a shoe being put on his leg so that he could walk along without limping?

A. A shoe could be placed on his foot but, in my opinion, that might improve his walking somewhat, but as far as getting around more easily is concerned, I do not think it would.

Examination by Mr. GRESHAM:

Q. As I understand it, doctor, this man's condition, of which you have testified to, is a permanent injury?

A. Yes, sir; it is permanent.

Q. And your opinion is that he has a permanent injury of about sixty-five per cent?

A. Approximately sixty-five per cent.

Q. Now, he is wearing a brace at this time, is he not?

A. Not to my knowledge, he is not, unless it has been put on since I saw him.

Q. Examine the brace, then, Doctor, and see if he has not a brace on now to brace and support the knee.

A. Yes, sir.

Cross-examination by Mr. KILBORN:

Q. As I understand it, Doctor, it is your judgment and opinion that this man has lost thus far somewhere between sixty and sixty-five per cent of the use of his right leg as a result of this injury?

A. That is my opinion.

272 Q. Now, isn't it also your opinion that this will probably decrease to some extent as the function is improved? In other words, will be reduced to some extent?

A. To a slight extent; yes.

Q. And that would run, as I understand you, about five per cent?

A. That is my personal opinion that that would be about five per cent.

Q. That was also Dr. Hanaw's opinion when he examined him, wasn't it?

A. I think it was at the time. We examined him since that and that report is on file, also.

Q. You figure this man, then, is only about forty per cent better off than the fellow who has got only one leg? Do you figure that that this man is only about forty per cent better off than a man that has not got a right leg at all, or do you figure he is a good deal better than if he had it cut off? In other words, this is what I mean: Do you think this man is only forty per cent off than a fellow with no right leg at all?

A. That is the way I figured it; yes, sir. Wait just a moment; I never looked at it that way. Yes; that is the way we have looked at it. He has got forty per cent use of that leg, I mean, approximately, roughly.

Q. You figure he is only forty per cent better off than a man with no right leg?

A. As far as the use is concerned, I think so.

The DEPUTY COMMISSIONER. Assuming that this condition has reached a permanent stage, and what I mean by permanent stage or permanent difficulty, is that the condition has reached that point where no medical treatment can improve the condition at all and the doctor discharges him as cured, as far as cure can be accomplished: Now, if, when he is so discharged, there is a permanent disability that will last as long as he lives—now, assuming that this condition has not yet reached a permanent stage, is it or is it
273 not your opinion that the condition that he is in now is temporary total or temporary partial, as far as wage-earning capacity is concerned? His occupation at the time of the injury was that of a rigger?

A. As far as this man's being able to resume his occupation as a rigger?

The DEPUTY COMMISSIONER. Yes.

A. In my opinion his disability is a complete disability in that regard. He is completely disabled from doing that kind of work.

The DEPUTY COMMISSIONER. Now, is he disabled from doing some other occupation other than that of a rigger?

A. He could be a night watchman or anything like that.

The DEPUTY COMMISSIONER. Is there any kind of work that he could do—if this man was to try to get out in the open labor market and try to get a job, what kind of a job could he hold, if he got one? Could he hold a watchman's job, catch rivets, or anything else?

A. In my opinion, he can not hold a job that requires very much walking. Of course, if he could obtain a position where he could sit down all the time, I do not see any reason why he could not do

that as well as anyone, but in my opinion he has a permanent disability of at least sixty per cent.

Mr. KILBORN. You mean of his right leg?

A. Yes, sir; of his right leg.

The DEPUTY COMMISSIONER. You mean that when a cure is accomplished, as far as a cure can be done, that he will have sixty per cent loss of use of his right leg?

A. Yes, sir; and it is the concensus of opinion of the hospital staff that the customary period of hospitalization has reached a conclusion.

The DEPUTY COMMISSIONER. In other words, they are getting ready to discharge him from the hospital?

274 A. Yes, sir.

The DEPUTY COMMISSIONER. That is all.

Mr. GRESHAM. There is nothing more you can do for him? He is just as cured as you can cure him?

A. Yes, sir; so far as treatment is concerned here, he is as nearly cured as he can be.

The DEPUTY COMMISSIONER. These questions Mr. Kilborn asked you about disability of forty per cent—your estimation of loss of use of the right leg was sixty-five per cent—that would be thirty-five per cent instead of forty per cent.

A. It was sixty to sixty-five. I said sixty to sixty-five per cent.

Mr. KILBORN. I thought, as I understood it, that you said somewhere between sixty and sixty-five per cent was about the radius of it.

A. That is about the radius of it, but I do not think it would reach less than sixty per cent disability.

Mr. KILBORN. In other words, this cure, when completed, would leave him with at least a sixty per cent disability of his right leg.

Mr. GRESHAM. Has there been any change in the recovery of loss of the use of his right leg between the last two examinations?

A. From the time I first went on duty there—I have forgotten the date—there has been practically no change whatever; practically none.

Mr. GRESHAM. It is purely speculative, isn't it, whether his right leg will get any better or not?

A. Absolutely all speculative.

The DEPUTY COMMISSIONER. Do you know what your rules are out there at the hospital in reference to a man coming out there for treatment? Suppose a man goes out there for treatment

275 and the hospital gives him treatment, thinking at the time that he comes under the Federal law entitling employees of the United States to medical treatment free of charge at the marine hospital, or a man gets injured and he is sent out to the marine hospital, and at that time the hospital assumes that it is not a compensation case, or not a case of this kind that we have right here, suppose it is found that the defendant in this case is liable for medi-

cal treatment rendered, is it the custom of the marine hospital to send him a bill in case the case is decided against the defendant?

A. You mean send the bill in to whom?

The DEPUTY COMMISSIONER. Send the bill in to the defendant in the case.

A. No, sir; my understanding of regulations of the marine hospital in that respect are, if a man off the street applies for treatment of an injury, he is given first aid, and then as soon as that is over he is sent to another hospital; any patient, unless he is a beneficiary of the service.

The DEPUTY COMMISSIONER. Then, as far as the marine hospital is concerned, in this case, the marine hospital has no charges to make against anyone?

A. No, sir; none whatever. As I take it, he is a merchant seaman.

Mr. KILBORN. So far as you know, your surgeons have determined that he is entitled to marine hospital treatment; is that it?

A. I know he is.

The DEPUTY COMMISSIONER. It is understood that an employee of the United States is entitled to free medical treatment at the marine hospital. Suppose it is found that Mr. Knudsen is not an employee of the United States, but that he was under the longshoremen's act and employee within the meaning of that act of Mr. Benson?

276 Mr. KILBORN. I object to that question as calling for the conclusion of the witness as to a matter of law.

The DEPUTY COMMISSIONER. I am asking him what his custom is out there. Doctor, do you know whether or not the hospital is going to present a bill for the services in this case?

A. This man is a merchant seaman and no bill will be presented to anyone. He is admitted here as a merchant seaman and after he is admitted as a merchant seaman—before we admit him the question of whether or not he is a merchant seaman is determined, and thereafter we do not have any comeback and we do not charge anything, of course. Well, for instance, we have this man off of the tug "Sister." That is our authority to admit him. We could not charge anything for these services then. That is, he is a beneficiary of the service, and, of course, no charge is made, like any other beneficiary. The hospital will make no charge to anybody in this case.

The DEPUTY COMMISSIONER. Is there anything further in this case?

Mr. KILBORN. That is all.

Mr. GRESHAM. That is all.

The DEPUTY COMMISSIONER. Do you gentlemen want to file any briefs?

Mr. KILBORN. I should like to.

Mr. GRESHAM. Yes, sir.

The DEPUTY COMMISSIONER. Ten, ten, and five. That means ten days for the opening brief, ten days for Mr. Kilborn to reply, and ten days for Mr. Gresham to reply to his reply brief.

Mr. GRESHAM. That is all right.

Mr. KILBORN. That is all right.

The DEPUTY COMMISSIONER. Briefs to be filed 10, 10, and 5—claimant to have opening brief; defendant to have ten days
277 to reply; and claimant to have five days to reply to Mr. Kilborn's reply brief. At the end of the time when said briefs are filed with the deputy commissioner, the case will be submitted, and the twenty days' time for him to draw up the compensation order in the case will commence at the time all briefs are in.

(NOTE.—The hearing was thereupon adjourned, and the court reporter requested to file his transcript within five days from date.)

[Reporter's certificates to foregoing omitted in printing.]

278 In United States District Court for the Southern District of Alabama

CHARLES BENSON, COMPLAINANT

vs.

LETUS N. CROWELL, DEPUTY COMMISSIONER, ET AL., RESPONDENTS

No. 2176, in admiralty

Final decree

Filed July 3, 1929

To the PRESENT AND PRESIDING THE HONORABLE ROBERT T. ERVIN, *Judge:*

This cause having been regularly set for trial, came on to be heard on the 3d day of July, 1929, all the parties being present in person and by attorney.

279 The respondent Crowell, on motion of the United States district attorney for the southern district of Alabama, and by leave of court, joined in and adopted the answer to the bill of complaint of the respondent Knudsen, and issue being joined, the complainant and the respondent Knudsen produced witnesses who testified orally in the presence of the court, and the respondent Crowell produced, offered, and filed in evidence the record of the proceedings before him as deputy commissioner but did not read same to the court, nor did the court read it; and the cause having been submitted by the advocates of the respective parties, and the same having been considered and understood by the court, upon a de novo hearing, and the court being of the opinion that complainant was not in fact the employer of the respondent Knudsen at the time of the latter's injury, and that the complainant Charles Benson should have decree in his favor, it is now therefore considered, ordered, adjudged, and decreed by the court and by the undersigned, as judge thereof, as follows:

1. That the respondent, J. B. Knudsen, was not in the employ of the complainant, Charles Benson, at the time of the injuries sustained by the said J. B. Knudsen on July 4th, 1927; and that the said J. B. Knudsen is not entitled on account of or for said injuries, to recover of the complainant, Charles Benson, any sum or sums by virture of the provisions of the longshoremen's and harbor workers' compensation act; and,

2. That the award of compensation in favor of the said J. B. Knudsen against the said Charles Benson, as made by the respondent Letus N. Crowell, deputy commissioner of the 7th compensation district, and filed by him in his office on December 26, 1928
280 (a copy of which award is attached as an exhibit to the orginal bill of complaint in this cause) is not in accordance with law; and,

3. That the said award is hereby in all things set aside, and the respondent J. B. Knudsen and the respondent Letus N. Crowell, as deputy commissioner in and for the 7th compensation district, shall be and they are both hereby restrained and forever enjoined from enforcing or attempting to enforce said award, or any part thereof; and,

4. That the claim of J. B. Knudsen against Charles Benson for compensation under the longshoremen's and harbor workers' compensation act, on account of the injuries alleged to have been suffered by said J. B. Knudsen on July 4th, 1927, shall be and it is hereby rejected and dismissed.

Each of the respondents, upon the rendition of the foregoing decree, reserved an exception thereto and to each paragraph thereof separately.

Done in term time this 3rd day of July, 1929.

ROBERT T. ERVIN,
Judge, United States District Court,
Southern District of Alabama.

281 In United States District Court

[Title omitted.]

Prayer for appeal by deputy commissioner

Filed Sept. 25, 1929

Now comes, Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, one of the respondents in the above-styled cause, in his own proper person and by and through the United States attorney for the southern district of Alabama, considering himself, as such deputy commissioner, aggrieved by the final decree made and entered in the above-styled cause on, to wit, July 3, 1929; and, under direction of the Department of Justice of the United States of America, does hereby pray an appeal, and does hereby appeal from

the said final order and decree of, to wit, July 3, 1929, to the United States Circuit Court of Appeals for the Fifth Circuit.

And the said respondent files herewith an assignment of errors in the said cause, and bases his appeal on the reasons therein specified, and prays that the appeal may be allowed; and that a transcript of the record, papers, and proceedings in which said final decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit.

282 LETUS N. CROWELL,
As Deputy Commissioner,
United States Employees' Compensation Commission
for the Seventh Compensation District.
ALEX C. BIRCH,
United States Attorney for
the Southern District of Alabama.
By J. E. MEREDITH,
Assistant United States Attorney.

[File endorsement omitted.]

283 In United States District Court

Assignment of errors by deputy commissioner

[Title omitted.]

Filed Sept. 25, 1929

To the honorable ROBERT T. ERVIN, *judge of the United States District Court for the Southern District of Alabama:*

Comes Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, one of the respondents in the above styled cause, in his own proper person and by and through the United States attorney for the southern district of Alabama, and respectfully says and shows that he, as such deputy commissioner, is agrieved by the final decree entered herein on, to wit, July 3, 1929; and the said Letus N. Crowell, as such deputy commissioner, says and shows that in the record and proceedings of the court in this cause and in the said final decree there is manifest error; and, as grounds thereof, said respondent assigns the following, separately and severally:

1st. The court erred in overruling the respondent Crowell's motion filed, to wit, February 7, 1929, to dismiss the original bill of complaint.

284 2nd. The court erred in its opinion of, to wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.) is unconstitutional and void, as being in contravention of the Constitution of the United States, unless construed so as to provide a de novo hearing upon the facts in the United States district court sitting in admiralty.

3rd. The court erred in its opinion of, to wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 stat. 1424; U. S. C. A. title 33, sections 901 et seq.) is unconstitutional and void as contravening article 3, section 2, of the Constitution of the United States, providing: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction;" unless said act be construed as providing a de novo hearing upon the facts in the United States district court, thereby overruling respondent Crowell's motion filed, to wit, February 7, 1929, to dismiss the original bill.

4th. The court erred in its opinion of, to wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.) is unconstitutional and void as contravening that the part of the fifth amendment to the Constitution of the United States providing that no person shall be "deprived of life, liberty, or property without due process of law;" unless said act be construed as providing a de novo hearing upon the facts in the United States district court, thereby overruling respondent Crowell's motion filed, to wit, February 7, 1929, to dismiss the original bill.

5th. The court erred in its holding of, to wit, May 27, 1929, that those portions of the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.) providing for procedure before and orders by the deputy commissioner are unconstitutional and void as being in contravention of article 3, section 2, of the United States Constitution providing: "The judicial power shall extend * * * all cases of admiralty and maritime jurisdiction."

6th. The court erred in its holding that those portions of the longshoremen's and harbor worker's compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A., title 33, sections 901 et seq.) providing for procedure before and orders by the deputy commissioner are unconstitutional and void as being in contravention of that portion of the fifth amendment of the United States Constitution, providing that no person shall be "deprived of life, liberty, or property without due process of law."

7th. The court erred in holding in its opinion of, to wit, May 27, 1929, that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A., title 33, sections 901 et seq.) gives to the United States district court, in proceedings under said act, jurisdiction to hear and determine issues of fact, without regard to evidence introduced before the deputy commissioner.

8th. The court erred in failing to sustain respondent Crowell's motion, filed, to wit, February 7, 1929, to dismiss the original bill of complaint, based on the insistence that said bill fails to show that there was no competent evidence before respondent Crowell, as

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deputy commissioner of the seventh compensation district, to support the award which said bill sought to enjoin.

9th. The court erred in failing to sustain respondent Crowell's motion filed, to wit, February 7, 1929, to dismiss the original bill of complaint, based on the insistence that said bill does not set forth, in whole or in part, the evidence or proof which was submitted to the deputy commissioner at the hearing on which an order praying to be enjoined was entered.

10th. The court erred in finally decreeing on, to wit, July 3, 1929, in favor of the complainant and against the respondent Crowell.

11th. The court erred in finding in its final decree, entered on, to wit, July 3, 1929, that the complainant was not in fact an employer of the respondent Knudsen at the time of the latter's injury; which finding was based upon a de novo hearing, and without considering or examining the proceedings had before the deputy commissioner.

12th. The court erred in entering on, to wit, July 3, 1929, the final decree, appealed from, upon a de novo hearing, and without regard to the proceedings before the deputy commissioner.

13th. The court erred in failing in its final decree, entered, to wit, July 3, 1929, to decree in favor of respondent Crowell under the record of and proceedings had before the respondent Crowell, as deputy commissioner of the seventh compensation district.

Wherefore, Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, for these and other errors, prays that an appeal may be allowed, and hereby appeals from said decree to the United States Circuit Court of Appeals for the Fifth Circuit; and prays that a transcript of the record herein may be sent to said court for filing, and that said court will proceed to hear said cause and reverse said decree; and for such other and further relief as may be just.

LETUS N. CROWELL,
As Deputy Commissioner, United States Employees' Compensation Commission for the Seventh Compensation District.

ALEX C. BIRCH,
United States Attorney for the Southern District of Alabama.
By J. E. MEREDITH,
Assistant United States Attorney.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Motion of Knudsen to join in appeal, etc.

Filed Sept. 25, 1929

Now comes J. B. Knudsen, one of the respondents in the above styled cause, and hereby prays to be allowed to join in the appeal

taken in this cause by Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, who is the other respondent in this cause, from the final decree made and entered in said cause on, to-wit, July 3, 1929, to the United States Circuit Court of Appeals for the Fifth Circuit; and said respondent Knudsen does hereby join in the appeal of the said Crowell, as such deputy commissioner, and does hereby pray an appeal; and does hereby appeal jointly with said Crowell, as such deputy commissioner, from the said final order and decree of, to-wit, July 3, 1929, to the United States Circuit Court of Appeals for the Fifth Circuit.

And the said respondent Knudsen files herewith his assignments of error in the said cause, and bases his appeal on the reasons therein specified, and prays that the appeal may be allowed; and that a transcript of the record, papers and proceedings in which said
289 final decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

J. B. KNUDSEN,
By PILLANS, COWLEY & GRESHAM,
His Proctors of Record.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Assignment of errors by Knudsen

Filed Sept. 25, 1929

To the honorable ROBERT T. ERVIN, *Judge of the United States District Court for the Southern District of Alabama:*

J. B. Knudsen, one of the respondents in the above styled
290 cause, respectfully represents that he is aggrieved by the decree entered herein on, to-wit, July 3, 1929; and that in said decree and in the record and proceedings of the court in this cause there is manifest error, and, as grounds thereof, said respondent assigns the following, separately and severally:

1st. The court erred in overruling the respondent Knudsen's motion, filed, to-wit, February 14, 1929, to dismiss the original bill of complaint.

2nd. The court erred in its opinion of, to-wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.,) is unconstitutional and void, as being in contravention of the Constitution of the United States; unless construed so as to provide a de novo hearing upon the facts in the United States District Court sitting in admiralty.

3rd. The court erred in its opinion of, to-wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act

(act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.,) is unconstitutional and void, as contravening article 3, section 2, of the Constitution of the United States, providing: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction"; unless said act be construed as providing a de novo hearing, upon the facts in the United States District Court, thereby overruling respondent Knudsen's motion filed, to-wit, February 14, 1929, to dismiss the original bill.

4th. The court erred in its opinion of, to-wit, May 27, 1929, holding that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A. title 33, sections 901 et seq.,) is unconstitutional and void, as
291 contravening that part of the fifth amendment to the Constitution of the United States, providing that no person shall be "deprived of life, liberty, or property without due process of law"; unless said act be construed as providing a de novo hearing upon the facts in the United States District Court, thereby overruling respondent Knudsen's motion filed, to-wit, February 14, 1929, to dismiss the original bill.

5th. The court erred in its holding of, to wit, May 27, 1929, that those portions of the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A., title 33, sections 901 et seq.) providing for procedure before and orders by the deputy commissioner are unconstitutional and void, as being in contravention of article 3, section 2, of the United States Constitution, providing: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

6th. The court erred in its holding of, to wit, May 27, 1929, that those portions of the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A., title 33, sections 901 et seq.) providing for procedure before and orders by the deputy commissioner are unconstitutional and void, as being in contravention of that portion of the fifth amendment to the United States Constitution, providing that no person shall be "deprived of life, liberty or property, without due process of law."

7th. The court erred in holding in its opinion of, to wit, May 27, 1929, that the longshoremen's and harbor workers' compensation act (act of March 4, 1927, chapter 509, section 1, 44 Stat. 1424; U. S. C. A., title 33, section 901 et seq.) gives to the United States district court in proceedings under said act jurisdiction to hear and determine issues of fact without regard to evidence introduced before the deputy commissioner.

292 8th. The court erred in failing to sustain respondent Knudsen's motion filed, to wit, February 14, 1929, to dismiss the original bill of complaint, based on the insistence that said bill fails to show that there was no competent evidence before the deputy

commissioner of the seventh compensation district to support the award which said bill sought to enjoin.

9th. The court erred in finally decreeing on, to wit, July 3, 1929, in favor of the complainant and against the respondent Knudsen.

10th. The court erred in finding in its final decree entered on, to wit, July 3, 1929, that the complainant was not in fact an employer of the respondent, Knudsen, at the time of the latter's injury, which finding was based upon a de novo hearing and without considering or examining the proceedings had before the deputy commissioner.

11th. The court erred in entering on, to wit, July 3, 1929, the final decree, appealed from, upon a de novo hearing and without regard to the proceedings before the deputy commissioner.

12th. The court erred in failing in its final decree entered, to wit, July 3, 1929, to decree in favor of respondent, Knudsen, under the record of and the proceedings had before the deputy commissioner.

Wherefore, J. B. Knudsen prays that he may be allowed to join in the appeal of Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, and the said Knudsen does hereby join in the appeal of the said Crowell, and does hereby appeal jointly with the said Crowell, as such deputy commissioner, from said decree to the United States Circuit Court of Appeals for the Fifth Circuit,
293 and prays that a transcript of the record herein may be sent to said court for filing; and that said court will proceed to hear said cause and reverse said decree; and for such other and further relief as may be just.

J. B. KNUDSEN,
By PILLANS, COWLEY & GRESHAM,
His Proctors of Record.

[File endorsement omitted.]

In United States district court

[Title omitted.]

Order allowing appeal

Filed September 25, 1929

This cause coming on to be heard on the motion of Letus N. Crowell, as deputy commissioner, United States Employees' Compensation Commission for the seventh compensation district, by and through the United States attorney for the southern district of Alabama; for an order allowing an appeal; and on the motion of
294 J. B. Knudsen that he be allowed to join in the appeal of the said Crowell as such respondent; and that he be allowed jointly with said respondent an appeal to the United States Circuit Court of Appeals for the Fifth Circuit; and it appearing to the court that both said Crowell, as such deputy commissioner, and the said Knud-

sen, have filed in this cause their assignments of error; and that said Crowell, as such commissioner, has prayed an appeal; and that the said Knudsen has joined in the said appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the final decree of this court rendered herein on, to wit, July 3, 1929; and it further appearing to the court that the appeal of the said Crowell, as such deputy commissioner, has been taken by direction of the Department of Justice of the United States of America:

Now, therefore, it is ordered and decreed by the court that the appeal of the said Crowell, as such deputy commissioner, be and the same hereby is allowed; that the said J. B. Knudsen be and he hereby is allowed to join in the appeal of the said Crowell, as such deputy commissioner; and that both the said respondents' appeal, as a joint appeal from the final decree of this court of, to wit, July 3, 1929, to the United States Circuit Court of Appeals for the Fifth Circuit, be and the same hereby is ordered and allowed, as prayed in the petitions of said respondents.

This September 25th, 1929.

ROBERT T. ERVIN, *Judge.*

[File endorsement omitted.]

295 [Clerk's certificate to foregoing transcript omitted in printing.]

296 [Minute entry of argument and submission, October 20, 1930, omitted in printing.]

297 In United States Circuit Court of Appeals for the Fifth Circuit

No. 5802

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION; AND J. B. KNUDSEN, APPELLANTS

VERSUS

CHARLES BENSON, APPELLEE

Appeal from the District Court of the United States for the Southern District of Alabama

Alexander C. Birch, U. S. Atty., Palmer Pillans and Alexis T. Gresham (Alex. C. Birch, U. S. Atty., and Pillans, Cowley & Gresham on the brief), for appellants.

Wm. G. Caffey and Vincent F. Kilborn (Outlaw, Kilborn & Seale, and Harry T. Smith & Caffey on the brief), for appellee.

Before FOSTER and WALKER, Circuit Judges, and HOLMES, District Judge

Opinion filed November 17, 1930

WALKER, Circuit Judge: On July 4, 1927, J. B. Knudsen, one of the appellants (herein referred to as the claimant), sustained personal injuries while on a derrick barge which was owned by Charles Benson, the appellee, and was then moored in the Mobile River, a navigable stream, the claimant then being on the barge for the
298 purpose of splicing a wire cable which was part of its equipment. The claimant filed against the appellee a claim for compensation for those injuries under the longshoremen's and harbor workers' compensation act. (44 Stat. 1424; 33 U. S. C. A. §§901, et seq.) In that proceeding the appellee put in issue allegations of the claimant, including the allegation that at the time the alleged injuries were sustained the claimant was an employee of appellee. After a hearing on that claim before a deputy commissioner under the act mentioned, one of the appellants, at which evidence was presented by the claimant and appellee, that official made an order awarding compensation to the claimant. That order, in the caption of which Knudsen was styled "Claimant" and appellee was styled "Employer," contained what was called "Findings of Fact," which included the statement: "That on the 4th day of July, 1927, the claimant above named was in the employ of the employer above named in Mobile, Alabama." Other than that statement it contained nothing as to the facts of any relationship existing between the claimant and the appellee at the time the former was injured. Thereafter appellee filed in the court below what was called a "bill of complaint" against the appellants. That pleading, after alleging the proceedings under the claim filed by the claimant and the making of the above-mentioned order, alleged "that the said award and compensation order was not in accordance with law, for the reason that said J. B. Knudsen was not at the time of said injury an employee of the complainant, nor was the matter of his claim against this complainant within the jurisdiction of the said deputy commissioner." That pleading contained further allegations to the effect
299 that prior to the date of the alleged injury, and after the derrick barge had been loaned by the appellee to the claimant and/or one Beauregard Roberts, and while it was used by one or both of them for purposes in which appellee was not concerned, the claimant wrongfully cut a cable thereon, and that at the time of the alleged injury the claimant was on board the barge for the purpose of splicing that cable as an act of reparation for the damage done by cutting it, but was not there as an employee or at the instance of appellee. That pleading prayed that the enforcement of that award be enjoined, and that it be set aside. After the overruling of motions of the appellants that appellee's bill be dismissed—

which motions stated the following, among other grounds: "The facts alleged do not show that there was no competent evidence before the deputy commissioner to support his order sought to be enjoined"—and after the appellant had filed an answer to the bill, the court entered upon a trial de novo of the issues raised, heard evidence offered by the opposing parties, consisting of testimony of witnesses examined in the presence of the court, and rendered a final decree, which contained a finding to the effect that the claimant was not in the employ of the appellee at the time the former sustained the injuries mentioned, and adjudged that the above-mentioned award was not in accordance with law, and that that award be in all things set aside. That decree contained the recital that "the respondent Crowell produced, offered, and filed in evidence the record of the proceedings before him as deputy commissioner, but did not read same to the court, nor did the court read it."

It is not questioned, and is not fairly open to question, that testimony given in the presence of the court supported a finding that at the time claimant sustained the alleged injuries he was not an
300 employee of the appellee. It appears from the opinion rendered by the district judge that his action in having a trial de novo for the purpose of passing on the question whether the award made by the deputy commissioner was or was not "in accordance with law," with the result of not confining the evidence to be considered to that taken before the deputy commissioner, was influenced by his conclusions that the provision of the above-mentioned act with reference to a compensation order being passed on by a district court was constitutionally invalid unless under that provision a court in passing on such an order properly may consider evidence other than or in addition to that heard by the official who made the order in question; and that under that provision it was permissible for the court, in passing on the challenged award of compensation, to hear and consider evidence other than or in addition to that taken before the official who made that award. (Benson v. Crowell, 33 Fed. (2d) 137.) Three Circuit Courts of Appeals (of the Third, Fourth, and Ninth Circuits) have reached conclusions opposed to those expressed by the district judge, deciding that the district court, in determining whether the award in question was or was not "in accordance with law," can consider no evidence other than that which was taken before the official who made the award of compensation, and that a challenged award must be confirmed if there was any evidence before the deputy commissioner supporting it. (Nordhavet (Parks Case), 1930 Am. Mar. Cas. 1827; Wheeling Corrugating Co. v. McManigal, 41 Fed. (2) 593; Northwestern Stevedoring Co. v. Marshall, Ib. 28.) Several district courts have reached conclusions in harmony with those arrived at in the three just cited cases. (Obrecht-Lynch Corporation v. Clark, 30 Fed. (2) 144; Merchants & Miners Transportation Co. v. Norton, 32 Fed. (2) 513; Joyce v. United States Deputy Commissioner, 33 Fed. (2d)

301 218; Pocahontas Fuel Co. v. Monahan, 34 Fed. (2) 549; Gray Harbor Stevedore Co. v. Marshall, 36 Fed. (2) 314.)

By the assertion and prosecution of the claim in question one individual sought to deprive another individual of property, the sum of money required to pay the compensation claimed and awarded. The fifth amendment to the Constitution of the United States has the effect of forbidding the accomplishment of that result under the claim asserted without due process of law. For the appellee to have the benefit of the due process of law to which he is entitled he must have had, at some stage of the proceeding prescribed by the above-mentioned act for the assertion and allowance of a claim to compensation under it, a fair opportunity for submitting to a judicial tribunal, for determination upon its own independent judgment as to both law and facts, the question whether the claim asserted is or is not allowable and enforceable. (Ohio Valley Co. v. Ben Avon Borough, 253 U. S. 287; Bluefield Co. v. Pub. Ser. Comm., 262 U. S. 679, 689; Lehigh Valley R. R. v. Commissioners, 278 U. S. 24, 37–41; Liu Hop Fong v. United States, 209 U. S. 453, 461; Ng Fung Ho. v. White, 259 U. S. 276, 284.) When a contested money demand is that of one private individual against another private individual, the latter is entitled to have the question of his liability passed on by a judicial tribunal before the issue of process, in its nature final, for the enforcement of the asserted liability. (Murray's Lessee v. Hoboken Land & Improvement Co., 18 How. 272, 284.) It is hardly consistent with the just stated proposition to hold that, as to the facts required to support its action in a case presented to it for decision, a court is restricted to a determination of the question whether an administrative official, who, as required by law, first passed on the controversy involved in the case, (did or did not have before him substantial evidence to prove the facts required to support
302 his conclusion. The claimant's injury having been sustained while he was on a vessel afloat in navigable waters, where he then was for the purpose of rendering a maritime service, the claim for compensation was within the admiralty jurisdiction, which jurisdiction is vested exclusively in constitutional Federal courts, not in legislative courts or tribunals, or in any executive official. (Martin v. Hurler's Lessee, 1 Wheat, 304; Southern Pacific Co. v. Jensen, 244 U. S. 205; Northern Coal & Dock Co. v. Strand, 278 U. S. 142; Panama v. Vasquez, 271 U. S. 557; Ex parte Bakelite Corp'n, 279 U. S. 438, 451.)

The above mentioned act provides for a claim for compensation being filed with a deputy commissioner, who is required, by order, to reject the claim or make an award in respect thereof; and that act provides: "If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which

the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District)." (33 U. S. C. A. §§ 919, 921; 44 Stat. 1436, §§ 19, 21.)

As to the action of a deputy commissioner on a claim presented to him, the act provides for his making or causing to be made such investigation as he considers necessary in respect to the claim, for his ordering a hearing on the claim upon the application of any interested party, and that "in making an investigation or inquiry or conducting a hearing the deputy commissioner shall not be bound by common law or statutory rules of evidence, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the
303 rights of the parties." (33 U. S. C. A., § 919(e), 923.) The act contains no provision requiring the deputy commissioner to make a finding of facts. It provides no means of disclosing, as to facts required to sustain that official's conclusion evidenced by his order, whether in finding the existence of such facts he was or was not influenced solely by what he learned from an investigation or inquiry other than on the hearing ordered by him, or whether he did or did not attach any probative value to evidence adduced at such hearing. The provision of the act as to a party in interest getting before a court the question whether a compensation order is or is not in accordance with law contains nothing indicating what is to be considered by the court in passing on that question. There is nothing in that provision to indicate that anything done or said by or before the deputy commissioner, other than his order which is sought to be suspended or set aside, is required to be disclosed or made known to the court in any way. The act contains no intimation that the court, in passing on the question so brought before it for decision, is not permitted to consider any evidence except that which the deputy commissioner had before him. We have discovered no provision of the act which indicates a purpose to make conclusive, if supported by substantial evidence, a finding of fact made by a deputy commissioner. In the absence of such a provision the existence of such an intention is not to be presumed, especially where the fact in question is one upon the existence of which that official's right or power to act at all is dependent. The absence of any provision in the act that the hearing by the court shall be upon a transcript of the proceedings before the deputy commissioner indicates that the Congress intended to give to the applicant for injunctive relief the right to have a hearing de novo before the court. (Lai Hop Fong v. United States, supra.) The remedy provided
304 for, an injunction, usually is a process issuing from a court of first instance, whose action in awarding such process is based on evidence adduced before itself, and its own findings or conclusions from that evidence. In view of the above mentioned provisions of the act, and of its omissions, we think it well may be inferred that the provision of the act prescribing the proceeding

challenging a compensation award was not intended to be appellate in its nature, and that, as to the facts of the case brought before a court by the institution of such a proceeding, that provision was not intended to have the effect of restricting the court to the determination of the question whether there was any substantial evidence before the deputy commissioner to sustain a finding of the facts required to support his order.

Under the above-mentioned act, compensation was not allowable to the claimant against the appellee unless at the time the former was injured he was an employee of the latter. The denial that the relation of employer and employee existed between them at that time was a denial of an essential jurisdictional fact. If that relation did not exist at the time the claimant was injured, the challenged award was not "in accordance with law." In the argument reference was made to the decisions in the cases of New York Central Railroad Company v. White, 243 U. S. 188; and Hawkins v. Bleakly, Ib. 210, in support of the contention that, as to the question of the existence of that relationship at the time of the injury, it was consistent with the requirement of due process of law to make the finding of the deputy commissioner conclusive if there was before him any substantial evidence to support that finding. We do not think that the decision in either of those cases supports the contention mentioned.

The first cited of those cases brought into question some pro-
305 visions of the workmen's compensation law of New York. The procedural provisions of that law were not brought into question, as it appears from the following statement in the court's opinion: "No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard required by the fourteenth amendment." The other case involved provisions of a workmen's compensation law of the State of Iowa. The court's opinion (p. 215) contained a quotation from an opinion rendered by the Supreme Court of Iowa which plainly indicated that that court did not give to the statute in question the effect of interfering with the power of the courts to pass on such questions as whether a claimant under the statute was an employee or whether his injury was one arising out of his employment, and that that statute provided for a judicial review upon all fundamental and jurisdictional questions. It is not to be doubted that the question whether at the time of the alleged injury the relation of employer and employee did or did not exist between appellee and the claimant is a fundamental and jurisdictional one. Unless that relationship existed at that time the act conferred no power or jurisdiction on any one to consider and pass on a claim for compensation for the injury sustained by the claimant.

If the court was restricted to a consideration of only the evidence which the deputy commissioner had before him, an anomalous situation was presented in the instant case. As above indicated, the only conclusion stated by the deputy commissioner on the subject of the

pensation Commission, petitioner, vs. Charles Benson. Filed February 12, 1931. File No. 35652.

File No. 35653. U. S. Circuit Court of Appeals, Fifth Circuit Term No. 731. Letus N. Crowell, as deputy commissioner for the seventh compensation district of the United States Employees' Compensation Commission, and J. B. Knudsen, petitioners, vs. Charles Benson. Filed February 12, 1931. File No. 35653.

Petition for writs of certiorari and exhibit thereto.